Technology Corp. based on a consent order.

On March 12, 2009, Isola filed a motion pursuant to 19 CFR 210.21(a)(1) to terminate the investigation as to Shengyi on the basis of withdrawal of the complaint. On March 16, 2009, Shengyi filed objections to Isola's motion to withdraw. On March 18, 2009, Isola filed an opposition to the objections. On March 19, 2009, Shengyi filed a reply. Also on March 19, 2009, the Commission investigative attorney filed a response in support of Isola's motion to withdraw the complaint. On April 16, 2009, the ALJ issued the subject ID, granting Isola's motion to withdraw the complaint.

The Commission has determined not to review the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

Issued: May 11, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–11367 Filed 5–14–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Consolidated Multiple Listing Service, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of South Carolina in *United States of America* v. *Consolidated Multiple Listing Service, Inc.,* No. 3:08–CV–1786–SB. On May 2, 2008, the United States filed a Complaint alleging that Consolidated Multiple Listing Service, Inc. (''CMLS'') violated Section 1 of the Sherman Act, 15 U.S.C. 1, by denying consumers choice of innovative fee-for-service business models available to consumers in other parts of South Carolina and by adopting burdensome prerequisites to membership that prevented some real estate brokers, who would likely compete aggressively on price, from becoming members of CMLS. The proposed Final Judgment, filed on May 4, 2009, requires CMLS to repeal its offending rules and prohibits CMLS from adopting any new rules that exclude or otherwise disadvantage brokers who compete in innovative ways.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 5th Street, NW., Room 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of South Carolina. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be addressed to John R. Read, Chief, Litigation III Section, Antitrust Division, U.S. Department of Justice, 450 5th Street, NW., Suite 4000, Washington, DC 20530, (202) 307–0468.

J. Robert Kramer II,

Director of Operations, Antitrust Division.

In the United States District Court for the District of South Carolina Columbia Division

United States of America, Plaintiff, v. Consolidated Multiple Listing Service, Inc., Defendant

Civil Action No.
Date: May 2, 2008
Judge:

Complaint for Equitable Relief for Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1

The United States of America, by its attorneys acting under the direction of the Attorney General, brings this civil antitrust action pursuant to Section 4 of the Sherman Act, 15 U.S.C. 4, against Defendant Consolidated Multiple Listing Service, Inc. (''CMLS''), to obtain equitable and other relief to prevent and remedy violations of Section 1 of the Sherman Act, 15 U.S.C. 1.

The United States complains and alleges as follows:

I. Introduction

1. The United States brings this action to prevent CMLS from enforcing rules, regulations, by-laws, policies, and procedures (collectively ''Rules'') that unreasonably restrain competition among real estate brokers in Columbia, South Carolina and the surrounding areas (''Columbia Area'').

2. CMLS is a joint venture comprised of brokers who compete with each other to sell brokerage services in the Columbia Area. CMLS, like other multiple listing services, provides services to its members, including an electronic database of information relating to past and current home listings in the Columbia Area. The database serves as a clearinghouse for the members to communicate information among themselves, such as descriptions of the listed properties for sale and offers to compensate other members if they locate buyers. In addition, the database allows members who represent buyers to search for nearly all the listed properties in the area that match the buyer's needs. By providing an efficient means of exchanging information on home listings, multiple listing services benefit buyers and sellers of real estate, and in turn, buyers of real estate brokerage services, in their service areas.

3. However, that same role makes access to CMLS's database—and therefore membership in CMLS—critically important for any broker seeking to serve clients efficiently in the Columbia Area. Access to the services provided by CMLS is key to being a successful broker, and CMLS is the only provider of such services in the Columbia Area. Therefore, brokers seeking to provide brokerage services in the Columbia Area need to be members of CMLS.

4. CMLS, its Board of Trustees (''Board''), and its members have adopted Rules that govern the conduct and business practices of its approximately 370 members and set standards for the admission of new members. Through these Rules, CMLS's Board and its members have unreasonably inhibited competition over the method of providing brokerage services to consumers in the Columbia Area and have stabilized the price those consumers pay for brokerage services. For example, CMLS's Rules prevent members from providing a set of brokerage services that includes less than the full array of services that brokers traditionally have provided—even if a consumer prefers to save money by purchasing less than all of such services. Additionally, CMLS's Rules require members to use a standard, pre-approved contract that, among other things, prevents its members from offering to a home seller the option of avoiding paying the broker a commission if the seller finds the buyer on her own.

5. CMLS's Rules also require members to conform other aspects of their brokerage businesses in the manner that the group demands. CMLS Rules impose unreasonable objective criteria for membership and contain subjective standards for admission to membership that allow CMLS representatives to deny membership to brokers who might be expected to compete more aggressively or in more innovative ways than CMLS's members would prefer, thereby excluding such brokers or deterring them from seeking membership.

6. Taken together, CMLS's Rules limit competition among brokers, artificially stabilize the price of brokerage services, and deter innovation and the emergence of new brokerage business models. By adopting and enforcing such Rules, CMLS has violated and continues to violate Section 1 of the Sherman Act, 15 U.S.C. 1.

II. Defendant CMLS, Its Board, and Its Members

7. CMLS is organized as a nonprofit corporation under the laws of the State of South Carolina. Its principal place of business is in Columbia, South Carolina, and its service area encompasses the counties of Richland, Lexington, Saluda, Kershaw, Calhoun, Newberry and Fairfield. CMLS is a joint venture comprised of over 370 competing brokers in the Columbia Area. Affiliated with those CMLS members are over 3,100 other licensed real estate professionals doing business in the Columbia Area.

8. Whenever this Complaint refers to any act or deed of CMLS, it means CMLS engaged in the act or deed by or through its members, officers, directors, Board, committees, trustees, employees, staff, agents, or other representatives while they were actively engaged in the management, direction, or control of CMLS's business or affairs.

9. Various persons and entities, not named as defendants in this action, have participated as conspirators with CMLS in the offense alleged in this Complaint, and have performed acts and made statements to further the conspiracy.

III. Jurisdiction and Venue

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

11. Venue is proper in this District and this Division under 15 U.S.C. 22, 28 U.S.C. 1391(b), and Civil Local Rule 3.01 because CMLS maintains its principal place of business, transacts business, and is found within this District and this Division.

IV. Effect on Interstate Commerce

12. The activities and the violations by CMLS alleged in this Complaint affect consumers located in South Carolina and in other States. CMLS members have provided and continue to provide residential brokerage services to in-state and out-of-State residents seeking to buy or sell real estate in the Columbia Area. In 2005, CMLS members facilitated the sale of real property worth more than $2 billion and they collected commissions of over $125 million for their services. Many of the real properties sold in transactions involving CMLS members are purchased with mortgages from out-of-state lenders and mortgage payments often are made across State lines. CMLS's activities and violations are in the flow of, and have a substantial effect on, interstate commerce.

V. Concerted Action

13. CMLS is a combination or conspiracy among its members, who are brokers that compete with one another in the Columbia Area. The members of CMLS, as a group and through the Board they elect and the staff they indirectly employ, have agreed to, adopted, maintained, and enforced Rules affecting the method of members' provision of brokerage services, participation in CMLS, and access to CMLS's services, including access to the electronic listings database. CMLS's Rules are therefore the product of agreements and concerted action among its members.

VI. Relevant Markets

14. The provision of brokerage services to sellers of residential real property and the provision of brokerage services to buyers of residential real property are relevant service markets within the meaning of the antitrust laws.

15. The 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 real estate 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. The geographic coverage of CMLS's service area establishes the outermost boundaries of the relevant geographic market, although meaningful competition among brokers may occur in narrower local areas.

VII. Background of the Offenses

Industry and Market Power

16. The vast majority of prospective real estate sellers and buyers engage the services of a broker. Brokers in the Columbia Area are in direct competition with each other to provide brokerage services to consumers.

17. CMLS is the only multiple listing service for the Columbia Area. Among other services that CMLS provides its members is the pooling and dissemination of information on the vast majority of properties available for sale in the Columbia Area. CMLS combines its members' real estate listings information into an electronic database and makes these data available to all brokers who are members of CMLS. By listing information about a property for sale with CMLS, a broker can market it efficiently to a large number of potential buyers. A broker representing a buyer likewise can search the CMLS database to provide the buyer with information about the vast majority of the properties for sale in the Columbia Area.

18. CMLS members use the database to, among other things: Communicate to other members the listings information relating to real estate that they have for sale; offer to compensate other members as cooperating brokers if they locate buyers for those listings; and locate real estate for prospective buyers.

19. CMLS also provides records of sold real estate, which are used by brokers working with sellers to set the real property's listing price and to determine what offers to accept. Brokers representing a buyer likewise use the sold data to help buyers determine what price to offer for real estate.

20. Access to CMLS is critical for brokers who wish to serve buyers or sellers successfully in the Columbia Area, and CMLS members account for virtually 100 percent of the real estate brokerage services provided to home buyers and sellers in the Columbia Area. Accordingly, CMLS has market power in the market for real estate brokerage services in the Columbia Area.

Alternative Brokerage Models

21. Brokers who adhere to traditional methods of doing business typically charge a fee calculated as a percentage of the sales price of the real estate. Some brokers outside of the Columbia Area offer alternatives to the traditional methods of providing brokerage services. If brokers offering these alternatives were not restricted from competing in the Columbia Area, they would provide consumers of brokerage services with competitive options and, in the process, would place downward

pressure on the prices charged by brokers offering traditional methods of providing brokerage services. However, CMLS's actions have unreasonably restricted such competition in the Columbia Area, thereby depriving consumers of these options and artificially stabilizing prices.

22. *Fee-for-Service Models.* Some brokers outside of the Columbia Area contract with home buyers and sellers to provide a subset of brokerage services charging only for the services that consumers wish to purchase. Many of these brokers offer their services for a flat fee rather than a percentage of the home's sales price and typically their fees are lower than what traditional brokers charge. One popular service offered by fee-for-service brokers is known as an ''MLS listing only,'' whereby a broker, in exchange for a fee, lists a property on the multiple listing service database, while allowing the seller to handle all other aspects of the transaction. Another fee-for-service package available to consumers outside of the Columbia Area involves the broker handling all aspects of the transaction, except for attending the closing. This is attractive to home sellers who are capable of performing all the necessary closing services themselves, or who have separately retained assistance with the closing, and would prefer not to pay a broker to attend. Through such packages, buyers and sellers can save money by purchasing only the services that they want their broker to provide.

23. *Exclusive Agency Listings.* Outside of the Columbia Area, brokers also are able to offer consumers the opportunity to save money on commissions and fees by offering an ''Exclusive Agency Listing,'' which is an agreement under which the seller pays no commission or fee to his broker if the seller finds the buyer himself.

24. While these and other competitively significant alternatives to the traditional method of providing brokerage services are available to consumers outside of the Columbia Area, CMLS's actions have unreasonably restricted such competition in the Columbia Area.

VIII. Restraints on Competition

25. CMLS has harmed competition among brokers in the Columbia Area to the detriment of consumers. As a result of CMLS's Rules, consumers of brokerage services in the Columbia Area pay higher commissions or fees for brokerage services and have fewer alternatives regarding the method of providing those brokerage services.

26. CMLS achieves these adverse effects by adopting and enforcing the following Rules, among others:

a. CMLS's Rules prohibit its members from competing with one another by offering consumers the sort of fee-for-service brokerage options described in Paragraph 22 above. For example, CMLS's Rules require that its members have ''active involvement'' in all aspects of the transaction, including ''in the marketing, sale, and closing of the property.'' CMLS By-laws, Art. IV. *See also* CMLS Rules, Rule 1(a) (requiring that members only use CMLS's pre-approved contract, which includes Article IV's active involvement language). The Rules also require that ''[o]ffers on properties included in the CMLS shall be made in written form to the Selling Company and not directly to the Owner,'' thereby precluding brokers and home sellers in the Columbia Area from entering into contracts whereby the brokers would let the sellers handle the offers in return for a reduced commission. CMLS Rules, Rule 2. These Rules prohibit brokers and home sellers from negotiating brokerage service terms and, consequently, harm consumers in the Columbia Area because they have fewer brokerage service models from which to choose.

b. CMLS's Rules prohibit its members from competing with one another by offering alternative contractual terms to consumers, such as the Exclusive Agency Listings contract described in Paragraph 23 above. CMLS requires that ''[e]ach listing submitted by a Member shall be in writing on the Exclusive Right to Sell Form as approved by the Board from time to time. No alteration of any kind to the provisions of the Listing Agreement shall be allowed.'' CMLS Rules, Rule 1(a). That same Rule forbids CMLS's members and consumers from ''mak[ing] any agreement * * * which varies, in any way, the provisions of the Listing Agreement.'' This Rule, for example, prevents brokers and home sellers in the Columbia Area from agreeing to an Exclusive Agency Listing whereby the seller would pay no commission or fee to her broker if the seller finds the buyer herself. Consequently, through CMLS, brokers in the Columbia Area have stabilized the commissions and fees they collect, at the expense of Columbia Area consumers.

c. These examples are not exhaustive. Other CMLS Rules have similar anticompetitive effects. CMLS's Rules, coupled with the need to be a CMLS member in order to compete effectively in the Columbia Area, allow brokers who are members of CMLS to prevent innovative or aggressive brokers from competing by denying them membership in CMLS, and to restrict the ways in which existing Columbia Area brokers do business by disciplining existing members who compete too aggressively or in a manner inconsistent with the wishes of other CMLS members. For example, CMLS's Rules require that members be ''primarily in the real estate business within primary areas served by the CMLS.'' CMLS By-laws, Art. III, § 1. CMLS also refuses to admit brokers who do not have commercial offices in the Columbia Area. CMLS Rules, Rule 5(b). These Rules exclude brokers located outside of the Columbia Area or that engage primarily in a business other than real estate, even if such brokers are fully licensed by the State of South Carolina to serve as real estate brokers. Moreover, CMLS provides its Board and officers unfettered discretion to reject applicants for membership, CMLS Rules, Rule 5(c), while simultaneously requiring those potential competitors to provide information about their proposed brokerage models and competitive histories. CMLS By-laws, Art. III, §§ 6–7. In addition to maintaining unfettered discretion over membership decisions, CMLS imposes an excessive initial fee on new members, well above its costs of adding them to the membership. *See* CMLS Rules, Rule 5(b). And, CMLS maintains unfettered discretion to expel or discipline members. CMLS By-laws, Art. III, § 4. Consequently, through CMLS, brokers in the Columbia Area have precluded the entry of aggressive competitors and stifled aggressive competition between members.

27. On April 17, 2008, after the United States informed CMLS of its intention to bring this action, CMLS's counsel told counsel for the United States that it had voted to amend some of its Rules. CMLS's counsel told counsel for the United States that the amendments affect some of the Rules listed in Paragraph 26, but that other of the rules about which the United States complains have not been changed. CMLS has not identified for the United States the precise changes that CMLS made to its Rules despite requests that it do so. Even if CMLS has changed some of its rules, those rules may well continue to violate the antitrust laws. Furthermore, even if CMLS, in the face of this lawsuit, has in fact brought some of its rules into conformity with the antitrust laws, CMLS retains complete discretion to make further changes to those rules that would unduly restrict competition and thus violate the Federal antitrust laws.

28. Taken individually or in conjunction with each other, the Rules restrain trade, and are not reasonably necessary to make a multiple listing service more efficient or effective nor to achieve any other procompetitive benefits. Therefore, the Rules are anticompetitive and, as a result, consumers of brokerage services in the Columbia Area pay higher commissions or fees for brokerage services and have fewer choices among types of brokers and the method of providing the brokerage services they offer.

IX. Violation Alleged

29. CMLS's adoption and enforcement of the Rules described above constitutes a contract, combination, or conspiracy among CMLS and its members that unreasonably restrains competition in the Columbia Area brokerage markets in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

30. The aforesaid contract, combination, or conspiracy has had and will continue to have anticompetitive effects in the relevant markets including: Stabilizing the price of broker commissions and fees; reducing competition on the method of providing brokerage services; raising barriers to entry; and suppressing innovation.

31. This contract, combination, or conspiracy is not reasonably necessary to accomplish any of CMLS's legitimate goals.

X. Request for Relief

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

a. 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. CMLS, its members, officers, directors, Board, committees, trustees, employees, agents, representatives, 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 contract, combination, or conspiracy alleged herein, or any other contract, combination, or conspiracy having a similar purpose or effect in violation of Section 1 of the Sherman Act, 15 U.S.C. 1;

c. CMLS eliminate and cease enforcing any and all Rules that unreasonably restrain trade and be prohibited from otherwise acting to unreasonably restrain trade; and

d. The United States be awarded its costs of this action and such other relief as may be appropriate and as the Court may deem just and proper.

Dated: May 2, 2008.

For Plaintiff The United States of America

/s/ ____________________
Thomas O. Barnett,
Assistant Attorney General.

/s/ ____________________
David L. Meyer,
Deputy Assistant Attorney General.

/s/ ____________________
J. Robert Kramer II,
Director of Operations.

/s/ ____________________
John Read,
Chief, Litigation III Section.
Nina Hale,
Assistant Chief, Litigation III Section.

/s/ ____________________
Ethan C. Glass,
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Attorneys for the United States of America, U.S. Department of Justice, Antitrust Division, Litigation III Section, 325 7th Street, NW., Suite 300, Washington, DC 20530, Telephone: (202) 307–0468.

/s/ ____________________
Kevin F. Mcdonald,
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By:
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Assistant United States Attorney, 1441 Main Street, Suite 500, Columbia, SC 29201, Telephone: (803) 343–3176.

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

Date: May 8, 2009

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceedings

The United States brought this lawsuit against Defendant Consolidated Multiple Listing Service, Inc. (''CMLS'') on May 2, 2008, to stop CMLS from violating Section 1 of the Sherman Act, 15 U.S.C. 1, by excluding and restricting new forms of competition and harming consumers of real estate brokerage services throughout the Columbia, South Carolina area. CMLS is a joint venture of nearly all active residential real estate brokers in the Columbia area. It controls access to the Columbia real estate brokerage market because it operates the area's only multiple listing service (''MLS''), a database of nearly all homes for sale through a broker. Because local brokers effectively need to be members of CMLS to be in business, CMLS has the power to dictate how brokers can compete and to exclude brokers who plan to compete in ways that traditional brokers do not like.

The United States' complaint alleged that CMLS used this power to adopt rules that disrupted the competitive process by impeding the ability of innovative brokers to enter the Columbia market and challenge the competitive methods of CMLS's existing members. CMLS required brokers to be actively involved in all aspects of each real estate transaction, even if their clients desired fewer services at a lower cost. It prohibited brokers from entering ''exclusive agency'' agreements with sellers under which the seller would owe no commission if he or she, rather than the broker, found a buyer. Brokers who hoped to lower their overhead by working from home offices or who were located in other areas but wanted to offer their services to home buyers and sellers in Columbia were denied membership in CMLS. CMLS charged applicants for membership a nonrefundable $5,000 initiation fee and demanded that they appear before a membership committee composed of the applicant's prospective competitors to discuss ''the nature of [their] business[es].'' If CMLS's board members did not like applicants or wanted to avoid competing with them, they could vote to reject the application.

As a result of these policies, consumers in Columbia were denied the benefits that innovative brokers have brought to real estate markets in other parts of South Carolina and around the country. Not only were Columbia-area home sellers unable to hire brokers with innovative business models—such as ''fee-for-service'' brokers who would provide only the services the sellers desired at a lower cost than full service brokers typically charged—consumers in Columbia paid more for brokerage services than consumers in other markets.

On May 4, 2009, the United States filed a Stipulation and proposed Final Judgment. The proposed Final Judgment, which is described more fully below, is designed to eliminate the harm to competition caused by CMLS's policies and restore competition to the

real estate brokerage market in Columbia. It requires CMLS to repeal its offending rules and prohibits CMLS from adopting any rules or practices that exclude or otherwise disadvantage brokers who compete in innovative ways.

The United States and CMLS have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

A. Description of the Defendant and Its Activities

CMLS is owned by, and its membership consists of, real estate brokers who compete with each other to represent buyers and sellers of homes in the Columbia area. It operates the Columbia area's only MLS, a listing service that maintains a database of nearly all homes for sale through a broker. Brokers in Columbia regard membership in CMLS to be critical to their ability to compete effectively for buyers and sellers. By joining CMLS, brokers in Columbia can promise their seller clients that information about the seller's property will immediately be shared with virtually all other brokers in the area. Brokers who work with buyers can likewise promise their buyer customers access to the widest possible array of properties listed for sale through brokers.

CMLS is controlled by its Board of Trustees, which has been dominated by traditional brokerage firms. For example, of the nine CMLS Board members in 2008, eight represented traditional, high-end brokerage firms that do not employ discount or alternative business models. The CMLS Board possessed the power to approve or deny membership applications, propose by-laws (subject to membership approval), and make rules for members. All CMLS member brokers must agree, in writing, to follow the CMLS rules as a condition of membership.

Like MLSs in other areas, CMLS possesses substantial market power. To compete successfully in Columbia, a broker must be a member of CMLS; to be a member, a broker must adhere to any restrictions that CMLS's Board imposes. Unlike most other MLSs, however, CMLS exercised this market power to regulate how brokers in Columbia were allowed to compete and to enact burdensome prerequisites to membership that prevented some real estate brokers, such as those who would likely compete aggressively on price, from becoming members of CMLS, ensuring that those brokers could not compete in the Columbia area.

B. Industry Background

The prices that Columbia-area consumers paid for brokerage services increased substantially from 2001 to 2007. Brokers who adhere to traditional methods of doing business typically charge a commission calculated as a percentage of the sales price of the home. As housing prices in Columbia (as in many other parts of the country) increased during that time period, commission fees that consumers paid traditional, full-service brokers also increased.

Outside Columbia, brokers responded to the higher home prices and increasing fees by competing in new ways. Many brokers outside Columbia have adopted fee-for-service business models under which home sellers pay a flat fee for specific services they want their broker to perform. Home sellers who choose fee-for-service brokers and who, for instance, take responsibility for marketing their own homes, negotiating their own contracts, or attending closing without broker assistance can substantially reduce the fees they pay their brokers. Many home sellers in markets outside of Columbia have opted to purchase only a single brokerage service: Having the broker submit information about the seller's property to the MLS. Some brokers offer an MLS-entry-only service for only a few hundred dollars (with an additional fee to be paid to any MLS member who finds a buyer for the property). Home sellers who elect to work with these brokers forego important services provided by full-service brokers, but can save thousands of dollars.

Other brokers outside Columbia deliver some brokerage services over the Internet, reducing their costs by automating some time-intensive tasks and passing cost savings onto consumers in the form of lower commissions. The ease of sharing information over the Internet has also allowed some brokers to serve a larger geographic area than they were able to when face-to-face communication was expected. Some brokers from other parts of South Carolina and neighboring states have expressed interest in competing with existing Columbia-area brokers and offering brokerage services to buyers and sellers in Columbia.

C. Description of the Alleged Violation

CMLS unreasonably restrained competition by impeding the competitive process through its adoption and enforcement of rules that banned innovative forms of competition and raised barriers to entry for new competitors. These rules, which were agreed to by CMLS's member brokers, injured consumers by limiting the variety of services available from Columbia-area brokers and raising the commissions that consumers must pay them. As none of these rules enhanced the efficiency or effectiveness of its MLS, CLMS's rules violate Section 1 of the Sherman Act, 15 U.S.C. 1.[1]

As alleged in the complaint, CMLS harmed competition through the following rules.

1. Freedom-of-Contract Restriction

CMLS prohibited brokers and their clients from entering into any agreement other than the single form contract dictated by CMLS. The single contract allowed by CMLS—an ''exclusive right to sell'' agreement—required the seller to pay a commission to the broker even if the seller, and not the broker, was responsible for finding a buyer for the home. In other markets, clients can negotiate an ''exclusive agency'' agreement under which the seller owes no commission to the broker if the seller finds a buyer. Exclusive agency agreements are favored by sellers who want to market their own properties, even after hiring a broker, and preserving the option of paying no commission. CMLS outlawed these agreements and any other deviations from its mandatory form contract.

2. ''Active Involvement'' Requirement

CMLS required brokers to be ''active[ly] involve[d]'' in the marketing, sale, and closing of each property. This prevented Columbia-area consumers from saving money by working with fee-for-service brokers who charged only for the specific services the consumers desired. This rule caused one Columbia-area broker who also operates in other parts of South Carolina to charge Columbia-area consumers $500 more than he charges consumers in other markets, where he is not obligated to

[1] CMLS's rules harmed competition in the provision of real estate brokerage services to buyers and sellers. The relevant geographic market in which these brokers compete is the greater Columbia area served by CMLS. As discussed above, CMLS possesses substantial market power in this market because virtually all Columbia-area brokers regard membership in CMLS and access to its MLS to be essential to their ability to compete effectively to serve Columbia-area buyers and sellers.

provide services consumers may not want.

3. Home Office Prohibition

CMLS required all new members to maintain commercial offices and prohibited them from operating out of their homes. This prevented entry into the Columbia market by many brokers who hoped to reduce their overhead by using home offices and passing on their cost savings to their clients in the form of lower fees.

4. Out-of-Area Broker Prohibition

CMLS insulated itself from competition from brokers outside of the Columbia area by requiring that all brokers maintain an office in the Columbia area. Discount brokers operating outside Columbia found they could not offer their services to Columbia-area consumers because their low-margin business models did not support opening offices within the CMLS territory.

5. Restrictive Membership Requirements

CMLS charged applicants a nonrefundable initiation fee of $5,000, greater than its costs in adding new members and substantially higher than similar entry fees charged by any other MLSs in South Carolina. CMLS, which maintains a million-dollar-surplus annually—in part based on these higher-than-necessary initiation fees—distributes a portion of its surplus each year to existing members, effectively taxing new competition to enrich incumbents. CMLS also required applicants for membership to appear for an interview with a membership committee consisting of the traditional, full-service brokers that dominated CMLS's Board, at which applicants were expected to discuss the nature of their businesses. This interview requirement deterred applications from several nontraditional, low-priced brokers who were fearful of losing their nonrefundable initiation fee if the interview committee opposed their business model and declined to approve their application. These brokers' fears were well founded, as CMLS's Board also possessed the power to deny membership to brokers who they feared would compete too aggressively.

D. Harm From the Alleged Violation

Taken together, CMLS's rules—established through the exercise of market power by CMLS's broker members—impeded competition among brokers in Columbia, denying Columbia-area consumers choices that are available outside of Columbia and increasing the fees they paid for brokerage services. The prevalence of nontraditional service offerings in markets outside Columbia makes it clear that consumers demand these offerings. The CMLS rules prohibited Columbia-area brokers from competing to satisfy that demand. One study conducted in connection with this case estimated, based on experiences in other markets, that approximately 1,500 Columbia-area home sellers were denied their preferred option—an exclusive agency listing—between 2005 and 2008.

Not surprisingly, data collected and analyzed in connection with this case also revealed that Columbia-area consumers paid more, on average, for brokerage services than consumers in other markets. Data supplied by four Columbia-area brokers that also do business elsewhere in South Carolina revealed that each broker collected more in commission fees from Columbia-area consumers than it did for the same service provided to consumers in other areas. On average, Columbia-area home sellers paid these brokers approximately $1,000 more per transaction than home sellers outside Columbia.

In sum, by disrupting the competitive process, CMLS's rules forced Columbia-area consumers to pay for less preferred and often more expensive brokerage services.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will restore competition to the Columbia-area brokerage market by eliminating the anticompetitive CMLS rules and imposing additional restrictions to ensure that CMLS does not adopt new methods to continue to impede competition. It requires CMLS to repeal its freedom-of-contract restriction,[2] its ''active involvement'' requirement,[3] and its requirement that brokers maintain an office in the Columbia area.[4] CMLS repealed its home-office prohibition during the course of the litigation. The proposed Final Judgment prohibits it from reinstating the rule.[5]

CMLS will also no longer be able to prevent the entry of innovative brokers. Under the proposed Final Judgment, applicants for membership will no longer be forced to submit to a potentially intimidating interview with existing CMLS members,[6] and CMLS's Board will no longer possess the discretion to deny applications for admission.[7] In fact, under the proposed Final Judgment, CMLS must admit any broker who is duly licensed in South Carolina.[8] The proposed Final Judgment also prohibits CMLS from charging application or initiation fees that exceed its ''reasonably estimated cost'' in adding new members.[9] This will ensure that applicants will not face an unnecessarily high entry fee and will end the practice of incumbent members enriching themselves at the expense of potential entrants.

The proposed Final Judgment also broadly prohibits CMLS from excluding

[2] *See* proposed Final Judgment, ¶ V.B.7. Sellers who enter exclusive agency agreements with their brokers, under which they owe no commission if they find buyers for their properties, may seek to market their homes themselves and not rely on their brokers for marketing services. The proposed Final Judgment also prohibits CMLS from interfering in the marketing efforts of home sellers who enter these exclusive agency agreements. *See id.* at ¶¶ IV.A.4, V.B. 11, V.B.12 & V.B.16.

[3] *See id.,* ¶ V.B.3. The proposed Final Judgment also requires CMLS to eliminate a related rule that required that offers to purchase a property be submitted only to the seller's broker, and not directly to the seller, regardless of the seller's wishes. *See id.,* ¶ V.B.10.

[4] *See id.,* ¶ V.B.13. CMLS also unnecessarily burdened brokers from other markets who sought to compete in Columbia by requiring that its members use CMLS-supplied keyboxes (devices installed on homes for sale that store a key that CMLS members can use to access the home to show to potential buyers). This requirement necessitated two trips to Columbia: One to pick up the keybox from CMLS and install it on the seller's home and another to remove and return the keybox to CMLS. The proposed Final Judgment alleviates this burden by allowing home sellers to pick up a keybox from CMLS and by requiring CMLS to maintain a list of local brokers available to remove and return keyboxes. *See id.,* ¶ V.B.18.

[5] *See id.,* ¶¶ IV.A.1 & IV.A.2.

[6] *See id.* ¶ V.B.14. Applicants will be required to complete an introductory class in the use of CMLS's system (unless they are already familiar with the system) and an orientation with a CMLS staff member. CMLS will provide the introductory training class and orientation no less frequently than once every two weeks. *See id* ¶¶ V.B.17 & V.E.

[7] *See id.,* ¶ V.B.14. CMLS collects copies of some agreements between brokers and their seller clients to ensure that a home seller has actually selected the broker to provide brokerage services in the sale of the seller's property or that the broker has complied with CMLS's reasonable requirement that brokers promptly submit information about the property to CMLS. These agreements, however, also identify the commission fee the seller agrees to pay his or her broker. To ensure that no CMLS member broker is able to learn about competitors' pricing practices from these agreements, the proposed Final Judgment requires CMLS to prevent any CMLS member from seeing the agreements it collects and permits brokers who are selected for CLMS's audit of their agreements to substantially redact the agreement to remove any competitively sensitive information. *See id.,* ¶¶ V.B.9 & V.F.

[8] *See id.,* ¶ IV.A.1.

[9] *Id.,* ¶ IV.B. CMLS had also raised entry costs by requiring that applicants obtain at least $500,000 in errors and omissions insurance coverage. This requirement forced a number of CMLS members who were unable to obtain insurance coverage to terminate their memberships in CMLS. The proposed Final Judgment requires CMLS to repeal its insurance requirement, but allows CMLS to insist that uninsured brokers disclose their lack of insurance coverage to clients and other brokers. *Id.,* ¶ V.B.20. This disclosure requirement will ensure that sellers and other brokers are fully informed about a broker's insurance coverage and will allow the marketplace to dictate the need for such coverage.

any licensed broker (who does not possess a criminal record[10]) from membership and from discriminating against or disadvantaging any broker based on the services the broker provides his or her clients, the contractual forms the broker uses, the broker's pricing or commission rates, or the broker's office location.[11]

Finally, the proposed Final Judgment, applicable for ten years after its entry by this Court,[12] establishes an antitrust compliance program under which CMLS must furnish to the United States minutes of each meeting of CMLS's Board or its committees and copies of its rules following any rule changes.[13] After entry of the proposed Final Judgment, CMLS is also required to provide copies of the Final Judgment and of its rules, modified to conform to the Final Judgment, to each of its members and to each person CMLS knows to have inquired about membership in the past five years.[14] The proposed Final Judgment expressly places no limitation on the United States' ability to investigate or bring an antitrust enforcement action in the future to prevent harm to competition caused by any rule adopted or enforced by CMLS.[15]

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against CMLS.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and CMLS have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: John R. Read, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.[16]

VI. Alternatives to the Proposed Amended Final Judgment

At several points during the litigation, the United States received from defendant CMLS proposals or suggestions that would have provided less relief than is contained in the proposed Final Judgment. These proposals and suggestions were rejected.

The United States considered, as an alternative to the proposed Final Judgment, proceeding with a full trial on the merits against CMLS. The United States is satisfied that the relief contained in the proposed Final Judgment will quickly establish, preserve, and ensure that Columbia-area consumers can benefit from unfettered competition in the Columbia market.

VII. Standard of Review Under the Appa for Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to 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
>
> (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.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the United States is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act).[17]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

[10] *See id.,* ¶¶ VI.A.

[11] *Id.,* ¶¶ IV.A.1 & IV.A.2.

[12] *Id.,* ¶ X.

[13] *Id.,* ¶ V.G.

[14] *Id.,* ¶ V.H.

[15] *Id.,* ¶ IX.

[16] *Id.,* ¶ VIII.

[17] The 2004 amendments substituted "shall" for "may" in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

[T]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[18] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland* Co., 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.''' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As the United States District Court for the District of Columbia recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[19]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that the United States considered in formulating 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:
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Owen M. Kendler,
United States Department of Justice, Antitrust Division, Litigation III Section, 450 5th Street, NW., Suite 400, Washington, DC 20530, Telephone: (202) 305–9969.
Dated: May 8, 2009

Certificate of Service

I, Jennifer J. Aldrich, certify that on this 8th day of May, 2009, I caused a copy of the *Competitive Impact Statement* to be served on the person listed below by ECF.

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Counsel for Defendant Consolidated Multiple Listing Service, Inc.

s Jennifer J. Aldrich
Jennifer J. Aldrich

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

Filed: 05/04/2009

[Proposed] Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on May 2, 2008, alleging that Defendant Consolidated Multiple Listing Service,

[18] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette* Co., 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest''').

[19] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

Inc. (''CMLS'') adopted rules and practices that exclude competitors from and restrain competition in the Columbia, South Carolina, real estate brokerage market in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, and Plaintiff and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against, or any admission by, any party regarding any issue of fact or law;

Whereas, the United States requires CMLS to agree to certain procedures and prohibitions for the purposes of preventing and remedying the loss of competition alleged in the Complaint;

Whereas, CMLS agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

Whereas, the purpose of this Final Judgment is the prompt and certain elimination of barriers to new and innovative broker competitors and impediments to competition among brokers in the Columbia area;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against CMLS under Section 1 of the Sherman Act, as amended, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

A. ''Board'' means CMLS's Board of Directors or Board of Trustees.

B. ''Broker-in-Charge'' means a broker-in-charge as the term is defined under Title 40, Chapter 57 of the Code of Laws of South Carolina.

C. ''CMLS'' means the Defendant, Consolidated Multiple Listing Service, Inc., its predecessors, successors, subsidiaries, affiliates, partnerships, and joint ventures and all directors, trustees, officers, employees, agents and representatives of the foregoing. The terms ''subsidiary,'' ''affiliate,'' and ''joint venture'' refer to any Person in which there is or has been partial (twenty percent or more) or total ownership or control between CMLS and any other Person.

D. ''Department of Justice'' means the United States Department of Justice, Antitrust Division.

E. ''Including'' means including, but not limited to.

F. ''Licensee'' means a Person licensed as a broker or salesman under Title 40, Chapter 57 of the Code of Laws of South Carolina and affiliated with a Member of CMLS.

G. ''Member'' means an Owner who is entitled to receipt of or access to all products and services that CMLS offers to any member or participant.

H. ''Membership'' means being a Member of CMLS.

I. ''Owner'' means a person who is or employs a Broker-in-Charge.

J. ''Person'' means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

K. ''Rule'' means any CMLS rule, bylaw, policy, standard, or guideline.

L. The terms ''and'' and ''or'' have both conjunctive and disjunctive meanings.

III. Applicability

This Final Judgment applies to CMLS and all other persons in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

A. Subject to the provisions of Section VI of this Final Judgment, CMLS shall not adopt, maintain, or enforce any Rule, or enter into or enforce any agreement or practice, that directly or indirectly

1. Denies Membership in CMLS to any Owner who requests Membership in CMLS;

2. Discriminates against or disadvantages any Member or Licensee based on the Member's or Licensee's office location, pricing or commission rates, business model, contractual forms or types used, or services or activities the Member or Licensee performs or does not perform for any home buyer or home seller;

3. Conditions CMLS's acceptance of any listing or its provision of any other product or service to any Member or any Licensee on the Member's or Licensee's pricing or commission rate or performance of or agreement to perform any service or activity for any home buyer or home seller; or

4. Prohibits, restricts, or impedes any truthful advertising or marketing activities of any home seller or discriminates against or disadvantages any Member or Licensee for any truthful advertising or marketing activity in which any home seller is engaged. For purposes of this provision, it is not untruthful for a home seller who has entered an exclusive agency listing agreement with a Member or Licensee to advertise his or her home in ''For Sale by Owner'' or ''FSBO'' publications or on ''For Sale by Owner'' or ''FSBO'' Web sites or to otherwise suggest to the public that the home seller is selling his or her own home.

B. CMLS shall not require any Owner who seeks to become a Member to pay, as a condition of becoming a Member, initiation, application, or other fees that, individually or in the aggregate, exceed the reasonably estimated cost incurred by CMLS in adding a new Member.

C. CMLS shall not inquire into or request information about the actual or anticipated business model, prices or commission rates charged or to be charged, or operations of (i) any Owner who requests Membership in CMLS, (ii) any Member, or (iii) any Licensee, except as necessary to ensure that the Owner, Member, or Licensee holds (or employs a person who holds) the appropriate license under Title 40, Chapter 57 of the Code of Laws of South Carolina.

D. CMLS shall not re-adopt or enforce any Rules or portions of Rules that it must delete under Sections V.A or V.B of this Final Judgment or reverse or modify any modifications to Rules or portions of Rules that it must modify under Section V.B of this Final Judgment.

V. Required Conduct

A. Subject to the provisions of Section VI of this Final Judgment, CMLS shall delete and cease to enforce any Rule, and discontinue any practice, that CMLS would be prohibited from adopting, maintaining, or enforcing pursuant to Section IV of this Final Judgment.

B. CMLS shall make the following specific changes to its Rules (all references are to the December 2008 version of CMLS's Bylaws and to the January 2009 version of CMLS's rules):

1. CMLS shall modify Article III, Section 1 of its Bylaws as follows:

Current language:

Those eligible for membership in CMLS shall consist of entities and/or individuals holding a license to engage in the real estate business within the Midlands of South Carolina which are primarily in the real estate business within primary areas served by the CMLS shall qualify for membership. The service areas include the counties of Richland, Lexington, Saluda, Kershaw, Calhoun, Newberry and Fairfield.

Modified language:

Those eligible for membership in CMLS shall consist of Owners who are or who employ Brokers-in-Charge holding licenses allowing them to engage in the real estate business in South Carolina.

2. CMLS shall delete and cease to enforce the following portion of Article III, Section 6 of its Bylaws:

This application will include a thorough resume of the new Member's Broker-in-Charge and owner. The prospective member also agrees that a credit check may be required. The application must be submitted to the CMLS office no later than two weeks prior to the scheduled membership meeting.

3. CMLS shall delete and cease to enforce the following portion of Article IV of its Bylaws:

Recognizing That Professional Representation Of Both A Buyer And A Seller Is Critically Important In Any Real Estate Transaction, No Property Shall Be Listed With The CMLS Unless The Agreement Between The Seller And Listing Agent Expressly Requires Active Involvement By That Agent In The Sale And Closing Of The Property. Failure To Abide By This Precept Shall Cause A Property To Be

De-Listed And May Subject The Listing Agent To Expulsion From CMLS.

4. CMLS shall modify Article XI of its Bylaws as follows:

Current language:

Any dispute between Members relating to or arising out of breaches or violations of the rules and regulations of the CMLS, or between Members and buyers and sellers, arising out of the use of the CMLS, shall be submitted for mediation as herein provided in the Exclusive Right to Sell Contract.

Modified language:

Any dispute between Members relating to or arising out of breaches or violations of the rules and regulations of the CMLS shall be submitted for mediation.

5. CMLS shall modify a portion of Definition 8 (''Listing Agreement'') as follows:

Current language:

CMLS allows the entry of Exclusive Right to Sell and Exclusive Agency into the CMLS database, as adopted and approved by the Board from time to time.

Modified language:

CMLS allows the entry of Exclusive Right to Sell and Exclusive Agency listings into the CMLS database.

6. CMLS shall modify Definition 10 (''FSBO'') as follows:

Current language:

Properties for sale by an Owner with no CMLS Exclusive Right to Sell Form executed by Owner.

Modified language:

Properties for sale by an Owner with no Listing Agreement executed by Owner.

7. CMLS shall modify Rule 1(a) as follows:

Current language:

Written Agreement. Each listing submitted by a Member shall be in writing on the Exclusive Right to Sell (ERTS) Form or Exclusive Agency (EA) Form as approved by the Board from time to time. No alteration of any kind to the provisions of the Listing Agreement shall be allowed. No material shall be included in the 'Special Stipulations' section of the Listing Agreements which is inconsistent with or which modifies the printed portion of the Listing Agreements or which is inconsistent with the By-Laws or Rules or Regulations of CMLS. No Member or representative thereof shall make any agreement with an Owner, whether verbally or in writing, which varies, in any way, the provisions of the Listing Agreements provided herein. CMLS allows only a single list price for a property.

Modified language:

Written Agreement. For each listing submitted to CMLS by a Member, the Member shall have a written Listing Agreement with the property owner.

8. CMLS shall modify Rule 1(b)(1) as follows:

Current language:

All listings shall be prepared on such forms as the Board shall approve from time to time* * *

Modified language:

Members shall collect information about listings submitted to CMLS on Listing Input Sheets as the Board shall approve from time to time * * *

9 . CMLS shall modify Rule 1(b)(2) as follows:

Current language:

All listings must be entered into the computer within 2 business days upon acceptance of the listing by the Member. If not entered by the Member, the listing shall be delivered to CMLS within 2 business days by hand delivery or facsimile transfer and a fee of $15.00 will be required for entry by CMLS. Completed Listing Forms (to include Listing Input Sheets and Exclusive Right to Sell or Exclusive Agency Contracts) are not required to be submitted to CMLS, but will be retained by member companies in accordance with current State Law. Copies of these documents shall be submitted to CMLS upon request. Additionally, ten (10) percent of new listings entered into the CMLS database will be automatically selected for audit. The Listing Company will be notified at the time the listing is entered into the system and an MLS number assigned. A follow-up e-mail will be transmitted to the Listing Agent, the person entering the listing and the BIC.

Modified language:

All listings must be entered into the computer within two (2) business days upon acceptance of the listing by the Member. If not entered by the Member, the Listing Input Sheet shall be delivered to CMLS within two (2) business days by hand delivery or facsimile transfer and a fee of $15 will be required for entry by CMLS. Completed Listing Agreements should be retained by member companies in accordance with current State Law. Copies of Listing Input Sheets (but not Listing Agreements) shall be submitted to CMLS upon request. However, no more than ten (10) percent of new listings entered into the CMLS database will be randomly selected for audit. The Listing Company will be notified at the time the listing is entered into the system and an MLS number assigned. A follow-up e-mail will be transmitted to the Listing Agent, the person entering the listing and the BIC. If selected for audit, the Listing Company shall submit copies of Listing Input Sheets and Listing Agreements to CMLS within two business days. Before submitting any Listing Agreement, the Listing Company may white out, black out, or otherwise conceal all information in the Listing Agreement except the Member's or Listing Agent's and owner's signatures, the co-broke fee to be paid to any Selling Company, the date of execution of the Listing Agreement, the term (length) of the Listing Agreement, and the address of the listed property. Listings submitted for audit may be reviewed by any CMLS employee other than those employees who are also CMLS Members. CMLS will destroy any audited Listing Input Sheets and Listing Agreements within five business days of receiving them or following the resolution of any issues.

10. CMLS shall modify a portion of Rule 2 as follows:

Current language:

Offers on properties included in the CMLS shall be made in written form to the Selling Company and not directly to the Owner.

Modified language:

Offers on properties included in the CMLS shall be made in written form to the Listing Company and not directly to the Owner, unless the Listing Company communicates otherwise in the broker or agent remarks field in the listing. The Listing Company shall, upon request, furnish an executed copy of a form dated and signed by the Owner stating as follows: 'I have entered a listing agreement with [broker] for the sale of my property. I have agreed with my broker that offers from potential buyers (or their brokers or agents) will be submitted to me and not to my broker'

11. CMLS shall modify a portion of Rule 3 as follows:

Current language:

There will be no owner's names or phone numbers on any signage.

Modified language:

There will be no owner's names or phone numbers on any signage, unless the Listing Company and Owner have entered an Exclusive Agency Listing as opposed to an Exclusive Right to Sell Listing.

12. CMLS shall modify a portion of Rule 3 as follows:

Current language:

No 'For Sale By Owner' (FSBO) sign may be placed on the property nor may the property be advertised in print media as a FSBO or electronically on FSBO sites.

Modified language:

No 'For Sale By Owner' (FSBO) sign may be placed on the property nor may the property be advertised in print media as a FSBO or electronically on FSBO sites, unless the Listing Company and Owner have entered an Exclusive Agency Listing as opposed to an Exclusive Right to Sell Listing.

13. CMLS shall modify a portion of Rule 5(b) as follows::

Current language:

In order to maintain the highest professional standards and meet the requirements of Article II Item 3, all Members must maintain an office in accordance with State Law. The office shall be maintained within primary areas served by CMLS, which includes the counties of Richland, Lexington, Kershaw, Saluda, Newberry, Calhoun and Fairfield.

Modified language:

In order to maintain the highest professional standards and meet the requirements of Article II Item 3, all Members

must maintain an office in accordance with State Law, enforcement of which is the responsibility of the appropriate State officials.

14. CMLS shall delete and cease to enforce Rule 5(c), which states as follows:

A representative (Owner/Broker-in-Charge) of the prospective Member must personally appear at the CMLS office for a brief orientation meeting with the Membership Committee. The CMLS Board will vote on acceptance of the prospective new Member at the next scheduled board meeting. This voting process may also be conducted via e-mail. The prospective Member will be notified of the Board's decision within 2 business days.

15. CMLS shall modify a portion of Rule 7 as follows:

Current language:

* * * no Member may advertise in any media that they can list a property in the CMLS for a flat fee without disclosing to the consumer that the consumer will be required to sign an Exclusive Right to Sell contract which includes the co-broke fee the consumer is willing to pay.

Modified language:

* * * no Member may advertise in any media that they can list a property in the CMLS for a flat fee without disclosing to the consumer that the consumer will be required to offer a co-broke fee.

16. CMLS shall modify a portion of Rule 7 as follows:

Current language:

No property may be advertised in print media as a FSBO or electronically on FSBO sites nor can a FSBO sign be placed on the property.

Modified language:

No property may be advertised in print media as a FSBO or electronically on FSBO sites nor can a FSBO sign be placed on the property, unless the Listing Company and Owner have entered an Exclusive Agency Listing as opposed to an Exclusive Right to Sell Listing.

17. CMLS shall modify Rule 17 as follows:

Current language:

Prior to being granted access to the CMLS system for the purpose of information entry an agent/representative or individual Member must attend and complete an introductory class on the use thereof and provide evidence thereof to the CMLS staff.

Modified language:

Prior to being granted access to the CMLS system for the purpose of information entry, an agent/representative or individual Members must attend and complete an introductory class on the use of the CMLS system and an orientation with a CMLS staff member (who is not a CMLS Member). New Members who previously worked as an agent/representative under another CMLS Member and had training in and access to the CMLS system need not repeat the introductory class and orientation. The agent/representative or individual Member will also be excused from the introductory class if he or she demonstrates familiarity with the MLS software used by CMLS, through membership in another MLS that uses the same software. In such case, the agent/representative or individual Member may receive the orientation by phone. CMLS shall provide introductory classes/orientation no less frequently than once every two weeks, if needed.

18. CMLS shall modify Rule 20(21) as follows:

Current language:

All keyboxes must be approved by the CMLS. Within the primary service area of CMLS, another type of keybox may be placed on the listing but must be accompanied by a keybox approved by the CMLS (including HUD homes, Corporate Owned homes, Foreclosures, etc). Subleasing of CMLS keyboxes is strictly forbidden and will result in a fine of $500 for each offense. Listings in violation of this rule will be removed from the CMLS system without notice.

Modified language:

Listings with keyboxes in the CMLS primary service area (Richland, Lexington, Kershaw, Saluda, Fairfield, Newberry and Calhoun Counties) must have a CMLS approved keybox. Another type of keybox (non-CMLS approved) may be placed on the listing but must be accompanied by a keybox approved by CMLS (including HUD homes, Corporate Owned homes, Foreclosures, etc.). Upon receipt of a signed agreement between the Seller and an agent/representative or individual Member requesting CMLS to supply a keybox directly to the Seller, CMLS will furnish the Seller a keybox. The agreement shall include a statement that the agent/representative or individual Member agrees to pay all normal fees associated with the issuance of a keybox. CMLS shall maintain a list of keyholders available to remove keyboxes as a service to listing brokers at a fee to be negotiated between the keyholder and Member. Subleasing of CMLS keyboxes is strictly forbidden and will result in a fine of $500 for each offense. Listings in violation of this rule will be removed from the CMLS system without notice.

19. CMLS shall modify Rule 20(23) as follows:

Current language:

Any agreement between a listor client and a Member that gives the Member an advantage over another Member must be disclosed on the CMLS listing input sheet and appear on the computer printout sheet, i.e., if the listing company or owner sells the property the commission will be modified. The listing member must disclose the details of such agreement when requested by another Member.

Modified language:

If a Member enters a Listing Agreement with an Owner under which the commission rate varies for any reason, that fact (but not the commission rate) shall be disclosed on the CMLS Listing Input Sheet and appear on the computer printout sheet.

20. CMLS shall modify Rule 21 as follows:

Current language:

Each member shall provide evidence to the Board annually that it maintains Errors and Omissions insurance in an amount of $500,000.00 or greater. Failure to maintain such insurance shall result in loss of membership if not corrected within 90 days after notice.

Modified language:

If a Member does not have or maintain at least $500,000 in Errors and Omissions insurance, it shall disclose that fact on each document required to be executed in the course of creating a listing. The Member shall also disclose that fact on the Listing Input Sheet and CMLS will include the following statement on any publication of that listing: 'The Listing Company for this property does not maintain Errors and Omissions insurance.

C. CMLS shall deliver, to any Person who requests it and by whatever reasonable delivery method such Person requests (including e-mail), a complete set of materials necessary to apply for Membership, including a complete set of CMLS's then-current Rules.

D. CMLS shall permit any Owner to submit an application for Membership by whatever reasonable delivery method he or she desires.

E. Within three business days of completion of orientation and CMLS system training, if needed, CMLS shall grant the Owner Membership in CMLS. If the applicant (Member, if orientation has been completed) has previously been trained in the use of CMLS's systems (by CMLS or another MLS), CMLS shall immediately provide the applicant all passwords and other information and materials necessary for him or her to submit listings to CMLS, to access CMLS's database of listings (including confidential or broker-to-broker information fields), and to use any product or service provided by CMLS. If the new applicant has not previously been trained in the use of CMLS's systems, CMLS shall provide such information and materials after the new applicant has completed training in the use of CMLS's systems. CMLS shall offer training in the use of its systems no less frequently than once every two weeks, if needed.

F. CMLS shall prevent any employee, officer, director, or trustee of CMLS who is himself or herself a Member or Licensee from viewing or accessing listing or other agreements between a Member or Licensee and any home buyer or home seller. Membership applications shall not request any

information concerning the business model or operations of or the commissions or other prices to be charged by the applicant.

G. CMLS shall furnish to the Department of Justice

1. A complete set of CMLS's Rules, within five business days of each modification to those Rules; and

2. A complete set of minutes of any meeting of CMLS Members or any regular or special meeting of CMLS's Board or of any committee comprised of members of CMLS's Board, within five business days of the approval of such minutes (if such minutes are formally approved) or of the finalization of such minutes (if such minutes are not formally approved).

H. Within five business days after entry of this Final Judgment, CMLS shall

1. Furnish to each Member and Licensee a hard or electronic copy of this Final Judgment and a hard or electronic copy of CMLS's Rules modified to conform to the provisions of this Final Judgment; and

2. Furnish a copy of this Final Judgment and a copy of CMLS's Rules modified to conform to the provisions of this Final Judgment to each Person who, in the five years preceding entry of this Final Judgment, CMLS knows to have picked up an application for Membership or who otherwise inquired about becoming a Member. CMLS shall also notify each such Person that CMLS will allow any Owner, who is not prohibited from Membership (under Rules permitted under Section VI of this Final Judgment), to become a Member.

VI. Permitted Conduct

Subject to Section IX of this Final Judgment and notwithstanding any of the above provisions, nothing in this Final Judgment shall prohibit CMLS from:

A. Denying Membership to or terminating the Membership of any Owner who no longer holds, or no longer employs a Broker-in-Charge who holds, a broker's license under Title 40, Chapter 57 of the Code of Laws of South Carolina or who has been convicted of a crime of either a criminal sexual nature or relating to the improper handling of funds;

B. Requiring, as a condition of obtaining or maintaining Membership, that CMLS Members certify that each Licensee affiliated with the Member has undergone a nationwide background check and has no convictions of either a criminal sexual nature or relating to the improper handling of funds; and disciplining, including terminating the Membership or access to CMLS of, any Member or Licensee who violates CMLS Rules or fails to pay CMLS's fees or dues, provided (i) that CMLS not discriminate in its investigation or discipline of Members or Licensees for Rules violations or failure to pay fees or dues based on the Members' or Licensees' office locations, pricing or commission rates, business models, contractual forms or types used, or the services or activities they perform or do not perform for any home buyer or home seller and (ii) that it maintain processes consistent with the requirements of § 33–31–621(b)(2) of the Code of Laws of South Carolina.

VII. Compliance and Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to CMLS, be permitted:

1. Access during CMLS's office hours to inspect and copy, or at the United States's option, to require CMLS to provide hard or electronic copies of, all books, ledgers, accounts, records, data and documents in CMLS's possession, custody, or control, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, CMLS's Members, directors, trustees, officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by CMLS.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, CMLS shall submit written reports or interrogatory responses, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by CMLS to the United States, CMLS represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and CMLS marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give CMLS ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. No Limitation on Government Rights

Nothing in this Final Judgment shall limit the right of the United States to investigate and bring actions to prevent or restrain violations of the antitrust laws concerning any Rule or practice adopted or enforced by CMLS.

X. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XI. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: ______________________

Court approval subject to procedures set forth in the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

Sol Blatt, Jr.,
United States District Judge.

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