

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KCLICKADS, INC. d/b/a BROKERS NYC,

Plaintiff,

v.

REAL ESTATE BOARD OF NEW YORK INC., BROWN HARRIS STEVENS RESIDENTIAL SALES LLC, TERRA HOLDINGS LLC, HALSTEAD PROPERTY LLC, HALSTEAD HOLDINGS LLC, WILLIAM B. MAY CO. INC, HERON PROPERTIES REALTY LTD., JOSEPH GREGORY INC., BARSHAY BROKERAGE REAL ESTATE GROUP LLC, SOTHEBY'S INTERNATIONAL REALTY INC., FOX RESIDENTIAL GROUP INC., NETTER REAL ESTATE, THE CORCORAN GROUP DOWNTOWN INC., THE CORCORAN GROUP EASTSIDE INC., THE CORCORAN GROUP RENTALS INC., THE CORCORAN GROUP WESTSIDE INC., PRUDENTIAL REAL ESTATE AFFILIATES INC., STRIBLING & ASSOCIATES LTD., ATCO RESIDENTIAL GROUP INC., HF INTERNATIONAL REALTY LTD., CITI HABITATS INC. and BROKERAGE FIRMS NOT YET IDENTIFIED (1-10), STEVEN SPINOLA, EILEEN SPINOLA, ELIZABETH GIBBS, DEBORAH BECK, GREG HEYM, HALL S. WILKIE, ARTHUR W. ZECKENDORF, WILLIAM LIE ZECKENDORF, DAVID A. BURRIS, KENT M. SWIG, CLARK P. HALSTEAD, PETER MARRA, RONNI LYNN AROUGHETI, JOSEPH BARBACCIA, BENJAMIN BARSHAY, KATHRYN KORTE, BARBARA FOX, RUTH McCOY, CORNELIA A. NETTER, CORINNE A. PULITZER, DIANE M. RAMIREZ, SUSAN M. RENFREW, ELIZABETH F. STRIBLING, JOHN WOLLBERG, HELENE FIELDS, JOHN E. ZUCCOTTI, BURTON P. RESNICK, PAMELA LIEBMAN, ANDREW HEIBERGER, LARY S. WOLF, ERIC GORDON, JOHN and JANE DOES (1-15),

Defendants.

VERIFIED COMPLAINT

Civil Action No.

JURY TRIAL DEMANDED

Klickads, Inc. d/b/a BrokersNYC (hereinafter "BrokersNYC") asserts the following Verified Complaint against the above-captioned defendants, charging them as

having violated the Federal and State antitrust laws in connection with the individual and collective efforts to exclude BrokersNYC and upon information and belief, other Listings Service Providers, from the REBNY Listing Service approved list of “seamless transmission” providers authorized to transmit and receive, on behalf of their REBNY-member clients, tens of thousands of (a) broker Exclusive cooperatives and condominiums for re-sale listings and (b) broker Exclusives for rent listings, available annually, in the Manhattan residential property market and vital to all brokers’ livelihoods. Plaintiff also alleges that defendants have conspired together to engage in illegal tying and monopolization of the relevant market and sub-markets defined herein. Plaintiff alleges as follows:

SUMMARY OF CLAIMS

1. BrokersNYC asserts herein that defendants have engaged in collusive conduct, in violation of Section 1 (15 U.S.C. Section 1) and Section 2 (15 U.S.C. Section 2) of the Sherman Act and Section 340 of New York State’s General Business Law (known as the Donnelly Act) on the basis of several antitrust theories: (a) illegal tying, (b) group boycott, (c) monopoly leveraging in connection with defendants’ domination and control over an essential facility, i.e. REBNY member Exclusive Listing information, and (d) attempted monopolization. The relevant market at issue is the market for Listing Services, which is comprised of three interrelated sub-markets: (a) the sub-market for Exclusive Listing information¹; (b) the sub-market for Real Estate Databases and (b) the sub-market for

¹ “Exclusive Listings” relate to for sale or for rent property listings of apartments, condominiums and cooperative units in which a property owner has designated a broker as the Exclusive broker. As used herein, the market for Exclusive Listings information pertains to the market for all information on Exclusive listings.

Data Transmission Services.² The geographic market relevant to plaintiff's claims is the Real Estate resale and rental market for the Borough of Manhattan.

Illegal Tying

2. As will be discussed in detail below, The Real Estate Board of New York ("REBNY") and the other defendants, operating through REBNY, have promulgated a series of rules from 2002 to the present, calculated to restrict transmission to and receipt of Exclusive Listings generated by REBNY members.
3. Because REBNY members generate, upon information and belief, upwards of 80% of the Exclusive Listings available in the Manhattan market, REBNY membership and compliance with its various rules and regulations have become keys to gaining access to Exclusive Listings information without which a broker cannot hope to compete in the Manhattan market.
4. In October 2002, REBNY promulgated a 72 Hour Rule which at face value appeared to take a step toward leveling the playing field for all brokers and upholding their fiduciary obligation to provide maximum exposure for a Seller's property. The 72 Hour Rule mandated the pro-active co-brokering of REBNY-member Exclusive Listings:
 "...within 72 hours of being engaged as an Exclusive Agent, every REBNY Residential Brokerage member must initiate an offer of co-brokerage of Manhattan listings to all REBNY Residential Members who have expressed in writing in receiving such listings."

Simply put, this 72 Hour Rule required dissemination of information from REBNY brokers with new Exclusives to other REBNY brokers.

² The market for Real Estate Database Services pertains to the market for Databases concerning the holding and organization of data concerning Exclusive listings and the market for Data Transmission Services pertains to the market for services and technology concerning the transmission and receipt of data concerning Exclusive Listing information."

5. Recently, REBNY enacted a rule requiring the “seamless transmission” of Exclusive Listings between and among REBNY members to be effected via the mandated use of ROLEX, Data Transmission Services, upon information and belief, developed and promoted by defendant Brown Harris Stevens Residential Sales LLC (“BHS”), a major Real Estate Brokerage firm.
6. Upon information and belief, BHS’s Data Transmission Service, known as ROLEX, and its underlying Database service, known as RealPlus, are competitive with plaintiff’s own services which have been utilized by its clients for eight years to transmit with other portals or advertising vehicles such as yahoo.com and www.nytimes.com.
7. By evolving a 72 Hour Rule into a “Listing Service” and making the use of the ROLEX/RealPlus system mandatory for its members, REBNY and the other defendants that dominate REBNY, effectively, have been able to tie access to REBNY’s Exclusive Listings to the use of these mandated Data Transmission and Database systems. Plaintiff submits that this arrangement is anticompetitive *per se* insofar as there is no possible pro-competitive justification for excluding other Listing Services that previously have been or currently are servicing REBNY-members in the same capacity.
8. In addition to tying access to Exclusive Listing information to using ROLEX/RealPlus, REBNY has also effectively tied access to REBNY member Exclusive Listings to REBNY Trade Association membership.
9. Insofar as REBNY’s Exclusive Listings are critical information for brokers to compete in the relevant real estate market and widest distribution best serves the consumers whom Exclusive brokers represent, such tying of Exclusive Listings pertaining to an MLS or, in this case, a Listing Service, to Trade Association services has been found, in other

jurisdictions, to be arrangements in violation of the antitrust laws. See *Thompson v. Metropolitan Multi-List, Inc.*, 934 F.2d 1566 (11th Cir. 1991) and *Marin County Board of Realtors, Inc. v. Palsson*, 16 Cal.3d 920, 549 P.2d 833 (1976)

Group Boycott

10. In addition to illegally tying products, such as Exclusive Listings, which are critical to effectively competing in the marketplace for brokers' services, to the use of a prescribed Data Transmission service, REBNY and the other defendants have effected a Group Boycott against BrokersNYC and other independent Listing Service providers who are mandated by their clients to provide or facilitate the integration (transmission and receipt) of Exclusive Listing information from and to their existing BrokersNYC Listing Services.
11. Specifically, REBNY has refused to allow BrokersNYC, on behalf of its REBNY-member clients, to perform its obligations to its REBNY-member clients – transmit Exclusives to other REBNY-members and receive from REBNY-members the Exclusive Listings to which all REBNY-members are entitled.
12. Upon information and belief, the purpose behind the Group Boycott is to preclude BrokersNYC from affording its own REBNY-member clients equal access to vital information and services and equal functionality of an integrated platform to its clients – in the same way that ROLEX provides to its clients.
13. Upon information and belief, while on one hand mandating a single transmission platform-- ROLEX, REBNY has cooperated with REBNY's prominent members to assure their swift and "seamless transmission" into their non-ROLEX systems.
14. There is no pro-competitive justification for refusing to allow BrokersNYC, on behalf of

its REBNY-member clients, to provide “seamless transmission” services with REBNY’s ROLEX/RealPlus Data Transmission and Database systems. Upon information and belief, arranging for data exchange (mutual transmission and receipt) would be a one-time, nearly costless process, which would merely entail entering into an agreement establishing the standardized fields for transmitting and receiving data (Exclusive Listings). In fact, this standard has already been defined as in use by ROLEX and REBNY’s largest brokerage firms. Therefore, there is no work to be undertaken by REBNY to enable BrokersNYC to afford its REBNY-member clients the opportunity to receive “seamless transmissions.”

Monopoly Leveraging

15. Through the use of its rule making authority REBNY has used the power to regulate transmission and receipt, and therefore, access, to a body of information that is critically important to brokers who compete in the Manhattan real estate market. Whether one considers REBNY a monopolist in the market for Exclusive Listings or the gatekeeper to a carefully orchestrated essential facility, the fact is that REBNY has endeavored *de facto* to leverage these powers to dominate the market for Listing Services.
16. As will be described in more detail below, by enlarging the 72 Hour Rule mandating pro-active dissemination of co-broke offers to the corporeal REBNY Listing Service, REBNY has used its power to exclude BrokersNYC from competing in the sub-market for Exclusive Listings, and, furthermore, REBNY has parlayed this same control over Exclusive Listings to undermine BrokersNYC’s position in the sub-markets for Data Transmission and Database Services.

Attempted Monopolization

17. Finally, plaintiff submits that the rules excluding BrokersNYC's REBNY-member clients from access to Exclusive Listings via "seamless transmission" of receipt by their existing BrokersNYC Data Transmission and Real Estate Database Services constitute evidence of defendants' specific intent to monopolize the market for Listing Services.
18. As will be described in more detail herein, because REBNY is the predominate trade organization in the geographic market and has regulatory control over the vast majority of Exclusive Listings relevant to the geographic market it has *de facto* obtained a monopoly position in the sub-market for Exclusive Listings.
19. Should REBNY and the Broker defendants be successful in tying access to such listings to the use of prescribed Data Transmission and its underlying Database Services, REBNY will be dangerously poised to take complete control of the market for Listing Services, which we submit is a situation that will serve only to retard innovation, destroy competition and, in the end result, lead to much higher information costs for brokers as well as adversely impact the scope of service options for their consumer clients.

JURISDICTION AND VENUE

20. Jurisdiction in this action is based on the Federal court's having Exclusive subject matter jurisdiction over anti-trust claims asserted pursuant to Sections 1 and 2 of the Sherman Act. This court also has supplemental jurisdiction over the state-law claims also alleged herein.
21. Personal jurisdiction is established pursuant to the 15 U.S.C. Section 15 and related Federal laws, *inter alia*, on the basis that defendants transact business in this district and

that the claims for relief herein alleged arose out of transactions taking place in this district.

22. Venue is proper pursuant to 15 U.S.C. Section 21 and 28 U.S.C. Section 1391, *inter alia*, on the basis that there is personal jurisdiction over the Defendants in this district.

PARTIES

23. BrokersNYC was, from 1994 through 2002, a service provided by Principal Connections Limited d/b/a Metro List Xpress (hereinafter “MLX”). In 2002, BrokersNYC was spun-off as a separate entity. For the past eight years, BrokersNYC has been a pace-setter in providing Manhattan broker clients, comprising more than 140 companies, or nearly 2000 real estate agents, integrated Listing Services including (a) a private Real Estate Database for brokers to maintain their own proprietary Exclusives and ads, (b) Exclusive and other listings obtained by fax, phone updates and data-feeds, (c) electronic distribution or publishing capabilities (i) to publish listings to brokers’ own websites, (ii) to transmit Exclusive listings by data-feed or email to other brokers’ databases or websites, including *The New York Times* website, www.nytimes.com, (iii) to communicate by email to broker clients or other brokers or listing contacts, or BrokersNYC personnel, (d) electronic capabilities to receive listings from landlords or brokers, (e) broker web design, development and hosting services (“Broker Web Services”) and (f) training, consultation and tech support (“Support”). In sum, for eight years, BrokersNYC has served as a flexible, inexpensive “one stop shopping” experience for brokers. Many BrokersNYC members are members of the Real Estate Board of New York (“REBNY”). Some BrokersNYC members are members of the Manhattan Association of Realtors. The plaintiff is a New York corporation with its principal place of business in New York City.

24. Upon information and belief, the REBNY is a private, not-for profit, trade association with six divisions, including Owners & Builders Division, Commercial Brokerage Division, Residential Brokerage Division, Management Division, Allied and Associates Division, and the Institutional Owners Division. REBNY's Residential Brokerage Division ("REBNY-RBD") is comprised of Manhattan's most powerful brokerage firms. Upon information and belief, the membership of REBNY'- RBD includes more than 140 CEOs of brokerage firms accounting for more than 5000 real estate agents – but with fewer than 3,000 actual REBNY dues paying members. Upon information and belief, over 85% of companies with more than five agents are members of REBNY. Upon information and belief, REBNY member firms account for more than 80% of the Exclusive Listings for re-sale or rent generated in Manhattan. Upon information and belief, REBNY and the other named defendants, who operate through REBNY, have substantial decision-making authority in the area of promoting the exchange and dissemination of Exclusive Listing information.
25. Upon information and belief, REBNY-RBD is dominated by the largest and most influential brokerage firms in Manhattan, including defendants Brown Harris Stevens, Halstead Property, and other John Doe brokerage firms.
26. Upon information and belief, BROWN HARRIS STEVENS RESIDENTIAL SALES LLC ("BHS") is one of the largest brokerage firms in Manhattan. Upon information and belief, BHS is a subsidiary or affiliated with a holding company, Terra Holdings and numerous other Brown Harris Stevens companies. Upon information and belief, BHS, has used software developer SST's RealPlus real estate database for at least five years. At

some point in time, BHS or a related entity invested in or acquired SST, or an affiliate thereof, which developed the RealPlus/RealPlus Online Listing Exchange (“ROLEX”) platforms. Upon information and belief, in June 2004, REBNY purchased or negotiated to purchase from BHS ROLEX and its underlying RealPlus Real Estate Database or a variation thereof to REBNY, with the intent of facilitating defendants’ power to raise barriers to entry and destroy competition in the relevant market and its constituent sub-markets.

27. Upon information and belief, defendant TERRA HOLDINGS LLC (“Terra Holdings”) owns and dominates Brown Harris Stevens, such that one is the alter-ego of the other. Upon information and belief, TERRA HOLDINGS has participated in discussions and meetings in which decisions were made to promulgate rules designed to raise barriers to entry and destroy competition in the relevant market and its constituent sub-markets.
28. Upon information and belief, HALSTEAD PROPERTY LLC and HALSTEAD HOLDINGS LLC, through its representatives have taken an active part in meetings and in discussions concerning REBNY in which it participated in promulgating anticompetitive rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets. Upon information and belief, HALSTEAD PROPERTY LLC and HALSTEAD HOLDINGS LLC have their principal places of business in this district.
29. Upon information and belief, WILLIAM B. MAY CO. INC, through its representatives has taken an active part in meetings and in discussions concerning REBNY in which it participated in promulgating anticompetitive rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets. Upon information and belief, WILLIAM B. MAY CO. INC has its principal place of business in

this district.

30. Upon information and belief, HERON PROPERTIES REALTY LTD, through its representatives have taken an active part in meetings and in discussions concerning REBNY in which it participated in promulgating anticompetitive rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets. Upon information and belief, HERON PROPERTIES REALTY LTD has its principal place of business in this district.
31. Upon information and belief, JOSEPH GREGORY INC, through its representatives, has taken an active part in meetings and in discussions concerning REBNY in which it participated in promulgating anticompetitive rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets. Upon information and belief, JOSEPH GREGORY INC has its principal place of business in this district.
32. Upon information and belief, BARSHAY BROKERAGE REAL ESTATE GROUP LLC, through its representatives, has taken an active part in meetings and in discussions concerning REBNY in which it participated in promulgating anticompetitive rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets. Upon information and belief, BARSHAY BROKERAGE REAL ESTATE GROUP LLC has its principal place of business in this district.
33. Upon information and belief, SOTHEBY'S INTERNATIONAL REALTY INC, through its representatives, has taken an active part in meetings and in discussions concerning REBNY in which it participated in promulgating anticompetitive rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets.

Upon information and belief, SOTHEBY'S INTERNATIONAL REALTY INC has its principal place of business in this district.

34. Upon information and belief, FOX RESIDENTIAL GROUP INC, through its representatives, has taken an active part in meetings and in discussions concerning REBNY in which it participated in promulgating anticompetitive rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets.

Upon information and belief, FOX RESIDENTIAL GROUP INC has its principal place of business in this district.

35. Upon information and belief, NETTER REAL ESTATE, through its representatives, has taken an active part in meetings and in discussions concerning REBNY in which it participated in promulgating anticompetitive rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets. Upon information and belief, NETTER REAL ESTATE has its principal place of business in this district.

36. Upon information and belief, THE CORCORAN GROUP DOWNTOWN INC, THE CORCORAN GROUP EASTSIDE INC, THE CORCORAN GROUP RENTALS INC, and THE CORCORAN GROUP WESTSIDE INC, through their representatives, have taken an active part in meetings and in discussions concerning REBNY in which they participated in promulgating anticompetitive rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets. Upon information and belief, THE CORCORAN GROUP DOWNTOWN INC, THE CORCORAN GROUP EASTSIDE INC, THE CORCORAN GROUP RENTALS INC, and THE CORCORAN GROUP WESTSIDE INC have their principal places of business

in this district.

37. Upon information and belief, PRUDENTIAL REAL ESTATE AFFILIATES INC, through its representatives, has taken an active part in meetings and in discussions concerning REBNY in which it participated in promulgating anticompetitive rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets. Upon information and belief, PRUDENTIAL REAL ESTATE AFFILIATES INC has its principal place of business in this district.
38. Upon information and belief, STRIBLING & ASSOCIATES LTD, through its representatives, has taken an active part in meetings and in discussions concerning REBNY in which it participated in promulgating anticompetitive rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets. Upon information and belief, STRIBLING & ASSOCIATES LTD has its principal place of business in this district.
39. Upon information and belief, ATCO RESIDENTIAL GROUP INC, through its representatives, has taken an active part in meetings and in discussions concerning REBNY in which it participated in promulgating anticompetitive rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets. Upon information and belief, ATCO RESIDENTIAL GROUP INC has its principal place of business in this district.
40. Upon information and belief, HF INTERNATIONAL REALTY LTD, through its representatives, has taken an active part in meetings and in discussions concerning REBNY in which it participated in promulgating anticompetitive rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets.

Upon information and belief, HF INTERNATIONAL REALTY LTD has its principal place of business in this district.

41. Upon information and belief, HF INTERNATIONAL REALTY LTD, through its representatives, has taken an active part in meetings and in discussions concerning REBNY in which it participated in promulgating anticompetitive rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets.

Upon information and belief, HF INTERNATIONAL REALTY LTD has its principal place of business in this district.

42. Upon information and belief, CITI HABITATS INC, through its representatives, has taken an active part in meetings and in discussions concerning REBNY in which it participated in promulgating anticompetitive rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets. Upon information and belief, CITI HABITATS INC has its principal place of business in this district.

43. BROKERAGE FIRMS NOT YET IDENTIFIED (1-10) refers to other brokerage firms who, upon information and belief, have colluded with the named defendants in order to promulgate anticompetitive rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets. Upon information and belief the brokerages as yet unidentified have their principal places of business in this district.

44. Upon information and belief defendant STEVEN SPINOLA (“Spinola”) is President of REBNY and is a resident of New York. Upon information and belief, SPINOLA has overseen REBNY-RBD rulemaking as it has affected the market for Listing Services and its sub-markets. Upon information and belief, in or about 2002, plaintiff advised

SPINOLA that certain of REBNY-RBD's rules were anti-competitive, but such concerns were ignored. Upon information and belief, SPINOLA has participated in meetings and discussions wherein decisions were made to promulgate rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets. Upon information and belief, SPINOLA resides in this district.

45. Upon information and belief defendant EILEEN SPINOLA ("Eileen Spinola") is a Senior Vice President of REBNY and is a resident of New York. Upon information and belief, EILEEN SPINOLA has overseen REBNY-RBD rule making as it has affected the market for Listing Services and its sub-markets. Upon information and belief, in or about 2002, plaintiff advised SPINOLA that certain of REBNY-RBD's rules were anti-competitive, but such concerns were ignored. Upon information and belief, EILEEN SPINOLA has participated in meetings and discussions wherein decisions were made to promulgate rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets. Upon information and belief, EILEEN SPINOLA resides in this district.

46. Upon information and belief defendant ELIZABETH GIBBS ("Gibbs") is an employee of REBNY and is a resident of New York. Upon information and belief, GIBBS has overseen REBNY-RBD rule making as it has affected the market for Listing Services and its sub-markets. Upon information and belief, plaintiff had advised GIBBS that certain of REBNY-RBD's rules were anti-competitive, but such concerns were ignored. Upon information and belief, GIBBS has participated in meetings and discussions wherein decisions were made to promulgate rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets. Upon information and

belief, ELIZABETH GIBBS resides in this district.

47. Upon information and belief defendant DEBORAH BECK (“Beck”) was a former Executive Vice President of REBNY and is a resident of New York. Upon information and belief, BECK has overseen REBNY-RBD rule making as it has affected the market for Listing Services and its sub-markets. Upon information and belief, plaintiff had advised BECK that certain of REBNY-RBD’s rules were anti-competitive, but such concerns were ignored. Upon information and belief, BECK has participated in meetings and discussions wherein decisions were made to promulgate rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets. Upon information and belief, DEBORAH BECK resides in this district.

48. Upon information and belief defendant GREG HEYM (“Heym”) is an employee of REBNY and is a resident of New York. Upon information and belief, HEYM has overseen REBNY-RBD rule making as it has affected the market for Listing Services and its sub-markets. Upon information and belief, HEYM has participated in meetings and discussions wherein decisions were made to promulgate rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets. Upon information and belief, GREG HEYM resides in this district.

49. Upon information and belief, defendant HALL C. WILKIE (“Wilkie”) is President of BHS and serves as a Governor of REBNY. Upon information and belief, WILKIE has been intimately involved in REBNY-RBD decision-making and supported the anti-competitive rules that will be described *infra*. Upon information and belief, WILKIE resides in this district.

50. Upon information and belief, defendant ARTHUR W. ZECKENDORF, is Co-Chairman of

Terra Holdings and a REBNY member. Upon information and belief, ZECKENDORF has participated in REBNY meetings and discussions where decisions were made to promulgate rules designed to destroy competition and raise barriers to entry in the relevant market and its constituent sub-markets. Upon information and belief, ZECKENDORF resides in this district.

51. Defendant WILLIAM LIE ZECKENDORF is Co-Chairman of Terra Holdings and a REBNY member. Upon information and belief, WILLIAM ZECKENDORF has participated in meetings and REBNY discussions in which decisions were made to promulgate anticompetitive rules designed to destroy competition and raise barriers to entry in the relevant market and its constituent sub-markets. Upon information and belief, WILLIAM ZECKENDORF resides in this district.

52. Defendant DAVID A. BURRIS is Co-Chairman of Terra Holdings and a REBNY member. Upon information and belief, BURRIS has participated in REBNY meetings and discussions in which decisions were made to promulgate anticompetitive rules designed to destroy competition in the relevant market and its constituent sub-markets. Upon information and belief, BURRIS resides in this district.

53. Upon information and belief, Defendant KENT M. SWIG, is Co-Chairman of Terra Holdings. Upon information and belief, SWIG has participated in REBNY meetings and discussions in which decisions were made to promulgate anticompetitive rules designed to destroy competition in the relevant market and its constituent sub-markets. Upon information and belief, SWIG resides in this district.

54. Upon information and belief Defendant PETER MARRA, formerly of William B. May Co., has participated in REBNY meetings and discussions in which decisions were made

to promulgate anticompetitive rules designed to destroy competition in the relevant market and its constituent sub-markets. In 2002-2003, plaintiff contacted MARRA on several occasions, expressing concern about the anti-competitive nature of certain of REBNY-RBD rules, but was ignored. Upon information and belief, MARRA resides in this district.

55. Upon information and belief, defendant RONNI LYNN AROUGHETI, on behalf of Heron Properties Realty Ltd., has served in an official capacity to REBNY –RBD or its committees at some time during the years 1999 and the present and has participated in REBNY meetings and discussions in which decisions were made to promulgate anticompetitive rules designed to destroy competition in the relevant market and its constituent sub-markets.. Upon information and belief, the defendant resides in this district.
56. Upon information and belief, defendant JOSEPH BARBACCIA, on behalf of Joseph Gregory Inc., has served in an official capacity to REBNY –RBD or its committees at some time during the years 1999 and the present and has participated in REBNY meetings and discussions in which decisions were made to promulgate anticompetitive rules designed to destroy competition in the relevant market and its constituent sub-markets. Upon information and belief, the defendant resides in this district.
57. Upon information and belief, defendant BENJAMIN BARSHAY, on behalf of Barshay Brokerage Real Estate Group LLC, has participated in REBNY meetings and discussions in which decisions were made to promulgate anticompetitive rules designed to destroy competition in the relevant market and its constituent sub-markets and has actively cooperated with ROLEX’s owners to recruit small firms to join the ROLEX system. Upon

information and belief, the defendant resides in this district.

58. Upon information and belief, defendant BARBARA FOX, on behalf of Fox Residential Group Inc., has served in an official capacity to REBNY –RBD or its committees at some time during the years 1999 and the present and has participated in REBNY meetings and discussions in which decisions were made to promulgate anticompetitive rules designed to destroy competition in the relevant market and its constituent sub-markets. Upon information and belief, the defendant resides in this district.
59. Upon information and belief, defendant RUTH MCCOY, on behalf of Brown Harris Stevens Residential Sales LLC, has served in an official capacity to REBNY–RBD or its committees at some time during the years 1999 and the present and has participated in REBNY meetings and discussions in which decisions were made to promulgate anticompetitive rules designed to destroy competition in the relevant market and its constituent sub-markets. Upon information and belief, the defendant resides in this district.
60. Upon information and belief, defendant CORNELIA A. NETTER, on behalf of Netter Real Estate, has served in an official capacity to REBNY –RBD or its committees at some time during the years 1999 and the present and has participated in REBNY meetings and discussions in which decisions were made to promulgate anticompetitive rules designed to destroy competition in the relevant market and its constituent sub-markets. Upon information and belief, the defendant resides in this district.
61. Upon information and belief, defendant CORINNE A. PULITZER, on behalf of various REBNY-member firms, presently with Heron Properties Realty Ltd., has served in an official capacity to REBNY –RBD or its committees at some time during the years 1999 and the present and has participated in REBNY meetings and discussions in which

decisions were made to promulgate anticompetitive rules designed to destroy competition in the relevant market and its constituent sub-markets. Upon information and belief, the defendant resides in this district.

62. Upon information and belief, defendant DIANE M. RAMIREZ, on behalf of Halstead Property LLC, has served in an official capacity to REBNY –RBD or its committees at some time during the years 1999 and the present and has participated in REBNY meetings and discussions in which decisions were made to promulgate anticompetitive rules designed to destroy competition in the relevant market and its constituent sub-markets. Upon information and belief, the defendant resides in this district.

63. Upon information and belief, defendant ELIZABETH F. STRIBLING, on behalf of Stribling & Associates Ltd., has served in an official capacity to REBNY –RBD or its committees at some time during the years 1999 and the present and has participated in REBNY meetings and discussions on behalf of an as yet unidentified brokerage where decisions were made to promulgate anticompetitive rules designed to destroy competition in the relevant market and its constituent sub-markets. Upon information and belief, the defendant resides in this district.

64. Upon information and belief, defendant JOHN WOLLBERG, on behalf of Atco Residential Group Inc, has served in an official capacity to REBNY–RBD or its committees at some time during the years 1999 and the present and has participated in REBNY meetings and discussions on behalf of an as yet unidentified brokerage where decisions were made to promulgate anticompetitive rules designed to destroy competition in the relevant market and its constituent sub-markets. Upon information and belief, the defendant resides in this district.

65. Upon information and belief, defendant HELENE FIELDS, on behalf of HF International Realty Ltd, has served in an official capacity to REBNY –RBD or its committees at some time during the years 1999 and the present and has participated in REBNY meetings and discussions on behalf of an as yet unidentified brokerage where decisions were made to promulgate anticompetitive rules designed to destroy competition in the relevant market and its constituent sub-markets. Upon information and belief, the defendant resides in this district.
66. Upon information and belief, defendant JOHN E. ZUCCOTTI has participated in REBNY meetings and discussions in which decisions were made to promulgate anticompetitive rules designed to destroy competition in the relevant market and its constituent sub-markets. Upon information and belief, the defendant resides in this district.
67. Upon information and belief, defendant BURTON P. RESNICK has participated in REBNY meetings and discussions in which decisions were made to promulgate anticompetitive rules designed to destroy competition in the relevant market and its constituent sub-markets. In January 2003, Plaintiff sent a letter to defendant on the basis that he was on REBNY’s Board of Governors and presumably had decision making authority, raising concerns that certain of REBNY rules were anticompetitive. Defendant would not respond. Upon information and belief, the defendant resides in this district.
68. Upon information and belief, defendant PAMELA LIEBMAN, as President of The Corporate Group, including Corcoran Group Downtown, Corcoran Group Eastside, Corcoran Group Westside or Corcoran Group Rentals, on behalf of Corcoran, has participated in REBNY meetings and discussions in which decisions were made to promulgate anticompetitive rules designed to destroy competition in the relevant market

and its constituent sub-markets. Upon information and belief, the defendant resides in this district.

69. Upon information and belief, defendant ANDREW HEIBERGER, on behalf of CitiHabitats, now owned by Corcoran, has participated in REBNY meetings and discussions in which decisions were made to promulgate anticompetitive rules designed to destroy competition in the relevant market and its constituent sub-markets. Plaintiff sent a letter to defendant on the basis that he was on REBNY's Board of Governors and presumably had decision making authority, raising concerns that certain of REBNY rules were anticompetitive. Defendant would not respond. Upon information and belief, the defendant resides in this district.

70. Upon information and belief, defendant LARY S. WOLF has served in the capacity of REBNY's legal counsel and upon information and belief participated REBNY meetings and discussions in which decisions were made to promulgate anticompetitive rules designed to destroy competition in the relevant market and its constituent sub-markets. Upon information and belief, the defendant resides in this district.

71. Upon information and belief, ERIC GORDON is the former owner and President of SST, a real estate database software vendor with a database called RealPlus and the electronic transmission system called ROLEX. In or around 2002, SST was bought in part or in entirety by Brown Harris Stevens or a related entity. Upon information and belief, defendant participated REBNY meetings and discussions in which decisions were made to promulgate anticompetitive rules designed to destroy competition in the relevant market and its constituent sub-markets.

72. JOHN DOES and JANE DOES NOT YET IDENTIFIED (1-10) refers to persons who,

upon information and belief, have colluded with the named defendants in order to promulgate anticompetitive rules designed to destroy competition and raise barriers to entry in the relevant market and constituent sub-markets. Upon information and belief the persons as yet unidentified have their principal places of business in this district.

73. In general, plaintiff submits upon information and belief that all the named defendants and as yet unnamed parties participated actively in discussions in which an overall plan was acceded to whereby REBNY's trade association status would be used as a vehicle to promulgate rules and policies designed to raise substantial barriers to entry and create material obstacles for competition in the relevant market and its constituent sub-markets.

TRADE ASSOCIATION SERVICES VERSUS MULTIPLE LISTING SERVICES AND LISTING SERVICES

Trade Association Services

74. The Real Estate Board of New York's Residential Brokerage Division offers numerous benefits to those purchasing Trade Association services from them, including real estate education courses, professional recognition, conventions, publications on real estate topics, lobbying activities to advance the real estate-themed purposes of the trade association and social activities. While REBNY bylaws require that all agents of a REBNY-member firm must be a REBNY-member and, upon information and belief, pay \$245 per year to be entitled to Trade Association membership, fewer than five of

³ Section 2. Commercial and Residential Brokerage Divisions: Membership in the Commercial and Residential Brokerage Divisions shall be divided into classes as follows:

(a) Broker A: Any individual who holds a license as a real estate broker pursuant to New York Real Property Law Article 12-A whose principal business is Real Estate Broker, Mortgage Loan Broker, Agent or Auctioneer, either in his own name or as a member of a partnership or an officer of a corporation and whose main office is in the Borough of Manhattan, City of New York, shall be eligible only for Broker A Membership or for Broker B Membership. It shall be the duty of every Broker A Member to impose as a condition of employment of any broker, associate broker, salesperson or manager employed by him, his copartnership or corporation in his main office or any branch office in Manhattan, that such employee, if qualified, shall apply for admission as a Broker B, Broker C, Salesperson, Management B, Management C or Management D, whichever such membership class is appropriate, and that if admitted such employee shall pay the dues required for such class of Member and the said Broker A Member shall be responsible for the payment of the dues of such employee.

REBNY's residential brokerage member firms comply with the 100% membership rule³. As will be seen, REBNY's selective enforcement of its 100% membership requirement rule along with its rule excluding BrokersNYC's REBNY-members from Exclusive Listings, have in tandem created a very anticompetitive environment for plaintiff and its REBNY-member clients.

75. Upon information and belief, until at least October 2002, REBNY did not have any policy requiring the mandatory exchange of REBNY member Exclusives.
76. Until at least June 2004, REBNY, a Trade Association, also never owned or operated a Multiple Listing Service or a Listing Service.
77. As a counterpoint to REBNY, certain brokerage firms created The Manhattan Association of Realtors ("MANAR") in 2001. MANAR purports to be a not-for-profit local chapter of the National Association of Realtors. Like REBNY, MANAR purports to offer trade association services, including real estate education courses, professional recognition, conventions, publications on real estate topics, lobbying activities to advance the real estate-themed purposes of the trade association, and social activities.
78. After three years, however, MANAR has attracted very few of the largest brokerage firms which continue to be REBNY members. None of the five largest brokerage firms, accounting in aggregate for more than 35% of Manhattan's approximate 7,000 real estate agents, are MANAR members.
79. As such, despite the existence of MANAR, REBNY essentially dominates the market for Trade Association Membership Services and, as will be explained later on, is the gatekeeper to thousands of Exclusive Listings, which in terms of volume account for, upon information and belief, upwards of 80% of the Exclusive Listings generated in the

relevant geographic market.

Multiple Listing Services

80. From the 1970s through 1992, in an estimated 700 jurisdictions other than Manhattan, centralized Multiple Listing Services evolved to share expensive database technology and place the burden of listings data entry upon each brokerage firm with a common interest in sharing Exclusive Listings (mostly for re-sale) and commissions upon consummated sales to buyers. Manhattan's largest brokerages have always resisted the development of an MLS.

81. Upon information and belief, through at least June 2004, REBNY has never owned or operated a Multiple Listing Service.

82. In 2001, the Manhattan Multiple Listing Service, Inc., a wholly owned subsidiary of MANAR, was formed to offer to Manhattan MLS members "traditional" MLS functions such as exchanging Exclusive Listings under rules governing the exchanges: one such rule was that members had to transmit their exclusives to other MANAR members within 72 hours of the listings becoming operative. Additionally, Manhattan MLS operates a website, www.mlsmanhattan.com for consumers to search Manhattan MLS members' Exclusive Listings. None of the five largest brokerage firms, accounting in aggregate for nearly 50% of Manhattan's approximate 8,000 residential real estate agents, are Manhattan MLS members. None of the Exclusive Listings of the five largest brokerage firms, representing more than 40% of Manhattan's Exclusive Listings are exchanged via the Manhattan MLS.

83. In the Borough of Manhattan, MANAR's Manhattan MLS is the only "traditional" or NAR- affiliated Multiple Listing Service. Since membership to MANAR and its Manhattan MLS is scant, most MANAR-member brokers still depend upon private Listing Services including BrokersNYC.

Evolution of Listing Services and Its Sub-markets

84. Simply put, upon information and belief, resistance to traditional MLS systems has characterized the Manhattan marketplace. Upon information and belief, this is because, historically speaking, large brokerage firms, which have less need and motivation to share Exclusive Listings and commissions -- have dominated the marketplace.

85. Real estate brokerages deal in detailed information: location, building type, building amenities, number of bedrooms, baths, floors and dozens of other fields. Having such information is critical to being able to service a Buyer client. Historical or comparable sales data can make the difference between obtaining a Seller's exclusive and achieving success or failure with a Buyer. Naturally, large brokers with Exclusive Listings do not want to share such Exclusive Listings with small brokers.

86. Just as the term "phone service" can mean many things to different people so the term "Listing Service" and "Listing Exchange" have different, imprecise meanings as used by different Manhattan brokers. While some use the terms "Listing Service" or "Listing Exchange" to refer to the digital means by which one can transport electronic listing information between and among brokers, other participants interpret "Listing Service" and/or "Listing Exchange" to mean both the listing content and the mechanism for transmitting and receiving listings. To avoid confusion, as used herein, the term "Listing

Service” shall describe individually and in combination these three components: (a) the content, which is comprised of information on Exclusive listings; (b) the facility to store and organize the content so it is useful to brokers and (c) the facility to transport electronically Exclusive Listing information between and among brokers. Accordingly, the market for Listing Services demanded by real estate brokers in Manhattan is comprised of three related sub-markets reflecting the three sometimes separate, sometimes combined, components of what Listing Services are: The three sub-markets at issue are as follows: (a) the sub-market for Exclusive listings information; (b) the sub-market for Real Estate Database Services; and (c) the sub-market for Data Transmission Services. Upon information and belief, prior to October 2002, the “rule” amongst REBNY-member brokers, who, upon information and belief, in the aggregate controlled more than 80% of the Exclusive Listings for resale or rent in the Manhattan market, was that REBNY-member brokers did not have to pro-actively disseminate their Exclusives to other REBNY brokers. However, if a REBNY member “found out” about an Exclusive and inquired about it, then the Listing broker (representing the Seller) had to cooperate with the Selling broker (who worked with the buyer client).

87. Upon information and belief, therefore, instead of an MLS, Manhattan brokerages participated in a voluntary *ad hoc* exchange of Exclusive listings, which were exchanged between and among brokers predominately by fax.
88. Upon information and belief, prior to October 2002, leading brokerages had “A, B, C, D, E, F, G Lists.” In other words, brokers would co-broke – disseminate – the Exclusive on a tiered level by first sending to their “A” list – typically the prominent brokers -- then later to their “B” list, and so on to the “G” list – smallest brokers -- when an Exclusive

could not otherwise be sold. Typically, REBNY member brokers would refuse to co-broke with non-REBNY members.

89. Upon information and belief, whereas the brokers operating in non-Manhattan locales participated in a mandatory centralized MLS model, Manhattan's brokers have traditionally participated in only *ad hoc*, informal exchanges resulting in substantial inefficiencies and redundant labor costs.
90. Upon information and belief, with housing units of apartments, cooperatives and condominiums, Manhattan's housing marketplace is distinct from the national norm of housing. Whereas Manhattan brokerages collect information on building amenities, apartment square footage, maintenance or common charges, exposures, ceiling height, etc, other brokerages across the U.S measure acres, lots and driveways. With such disparate information sets and a general lack of demand from large brokerages, upon information and belief, real estate software companies and MLS vendors historically have shunned Manhattan because despite the high volume of sales dollar transactions, the market demand for sophisticated listings databases has been relatively small.
91. Upon information and belief, until a decade ago, absent a Multiple Listing Service, Manhattan real estate brokers worked from index cards and binders. With the advent of personal computers and computer networks, a market opportunity was created for innovative technology companies such as BrokersNYC to offer Listing Services to small and medium sized brokerages or start up firms that did not have resources to develop and maintain a proprietary database software program of their own or maintain a full Listing Department to handle 5,000 active broker Exclusives for rent or sale or to design and host a company website.

92. With access to Listing Services such as BrokersNYC, a real estate brokerage can perform

some or all of the following:

- Enter and update its company listings
- Search its company listings
- Enter or update other brokerage companies' Exclusives for their internal use
- Search other brokerage companies' Exclusives
- Enter or update open listings from sellers or landlords
- Search open listings entered
- Manage client profiles and match clients to company owned or entered listings.
- Choose distribution to within its company only or consumers only or brokers only or all parties
- Electronically "publish" a listing to its company website, edit or update listings posted to the company website
- Electronically send a listing or datafeed to create an ad for other websites such as www.nytimes.com
- Manage clients profiles and "push" matched listings to clients
- Set up automated alerts of matching apartments for clients
- Search for listings to match clients needs – by area, number of bedroom, price, type of listings and another 50 parametric settings
- View building photos and floor-plans
- Participate in training sessions
- Build an Agent resume
- Become a Building Specialist
- Receive data-feeds from other brokers or landlords
- And perform many other functions.

93. In today's age of personal computers, networking and the internet with XML and RSS datafeeds or transmissions, Listing Services such as BrokersNYC have been pioneers in providing affordable solutions to brokers, by integrating information and technology, including the integration of listings, Databases and Data Transmission Services which transmit to web portals such as Yahoo or advertising sites such as www.nytimes.com or accepting data-feeds from landlords and brokers.

94. Upon information and belief, there is no substantial difference in the core functionality of the RealPlus Real Estate Database upon which sits the ROLEX system or other real estate

software vendors' databases such as BrokersNYC's private Real Estate Databases. All Real Estate Databases provide a mechanism for a user to enter information and search for information. In most cases, Real Estate Databases are networked to enable multiple users within an office and/or connected externally to coordinate users from several different offices of the same company.

95. With the advent of Internet technology, just as a cell phone might or might not be Internet enabled to send emails or photos, the function of Real Estate Database Services might or might not be enabled with Data Transmission Services. Indeed, these latter services can be bundled with a host of other *a la carte* services to provide broker clients a comprehensive range of service and product options.
96. Upon information and belief, there is no material difference between the core functionality of a ROLEX "seamless transmission" or datafeed and a "seamless transmission" or datafeed generated by another competent Listing Services, including plaintiff BrokersNYC. Transporting, sharing and/or exchanging data or Exclusive Listings by transmission or datafeed is simply the exporting or importing of data and is almost as easy as dialing a cell phone or sending email to a group list of contacts. Indeed, all that is necessary for a datafeed or "seamless transmission" is for a sender and a recipient to agree upon the standard of how data should be sent (exported) to the recipient (imported) so as to enable the recipient to easily insert predictable rows of data into his own database – just as telephone communications companies' clients communicate with each other by utilizing shared standards. In the case of a real estate transmission or datafeed, a set of listings would be sent, for instance, in a standardized format of: location, building address, apartment number, number of bedrooms, number of baths, square feet, price, maintenance,

and so on. The establishment of a transmission or a datafeed requires only (a) a one time setup effort in which the sending and receiving entities agree to a standardized format of a dataset and (b) the scheduling of an automated trigger to query the sender's database for certain eligible content. For example "on" market Exclusive Listings, is to be sent as a data file on a regular basis to the recipient and on the receiving side, an automated process "looks for" transmissions or received datafeeds and picks up a feed and inserts information into rows in a database. After the completion of a one-time set-up process, BrokersNYC clients and other Listings Service Providers can easily exchange listings with any other entity cheaply and efficiently – and eliminate redundant and laborious data entry. Conversely, the refusal to cooperate in an electronic exchange of listings inefficiently raises the cost for the data-desiring parties. The transmittal or receipt of a datafeed requires a database receptacle from which to retrieve and send and another database receptacle into which to receive. But in the same way an AT&T caller can contact or receive calls from Verizon customers, a standardized transmission or datafeed can be easily made compatible with many databases. On this basis, the REBNY Listing Service need not dictate only one "seamless transmission" service, ROLEX, or one originating or accepting database – ROLEX's RealPlus Database—but in theory can coordinate with innumerable, different databases with a shared common format.

97. Upon information and belief, as a result of Listing Services such as those provided by BrokersNYC, (a) small gage, entrepreneurial brokers are able to open new brokerages and (b) existing small and medium-sized brokerages can be more efficient, competitive and have the facility to offer differentiated services to consumers.

98. In sum, upon information and belief, employing the Listing Services provided by

BrokersNYC and others, the small broker can now effectively compete with the large brokerage firms – and often can price their service fees more competitively. In addition to enhancing the efficiency of the real estate market as a whole, the advent of efficient online systems, which substantially lowers development, technology and information costs for each brokerage, makes it more possible for small brokers to offer discounted brokerage services to consumers.

99. Upon information and belief, for the past eight years, REBNY has hosted meetings for REBNY brokers to discuss the development of an MLS-like or Listing Service entity for REBNY-member brokers. In general, historically, REBNY's small brokers with few Exclusives were in favor of a Multiple Listing Service with mandatory distribution and receipt of Exclusives while large brokerages, which did not want to share their databases of Exclusives, were tepidly interested in a universal website for consumers as a joint marketing vehicle or a more watered-down version of a Listing Service. Most large brokerages were adamant about not sharing information, for instance, on the price of sold properties, which upon information and belief, was one of the principal reasons why none of the largest brokerages chose to participate in MANAR's Manhattan MLS, which mandated sharing of "sold" data.

100. Upon information and belief, for the past five years, the most influential of REBNY-member brokers have expressed their concerns about the negative ramifications of entrepreneurial Listing Services like BrokersNYC. To address this threat in or about October 2002, REBNY and the Broker Defendants promulgated two rules, which together, served to alter the market for Listing Services:

- REBNY's **51% Rule** requires that 51% of a firm's revenue be derived from providing brokerage services as distinct from providing multiple listing and

database services.

- REBNY's **72 Hour Rule** requires all REBNY member brokers to pro-actively disseminate their Exclusives to other REBNY members and requires any electronic exchange to be conducted via BHS's RealPlus/ROLEX system.

101. As implemented, the aforementioned rules, upon information and belief, were intended to restrict competition from established, tenured Listing Services and to discourage or prohibit REBNY members from using existing Listing Services and requiring REBNY-members of other Listing Services to switch to REBNY's mandated ROLEX and underlying RealPlus Real Estate Database platform.

102. Plaintiff submits that REBNY's single, closed, proprietary REBNY Listing Service, spawned from the 72 Hour Rule, is regressive, unnecessary, costly and not necessarily the only or even the most efficient or beneficial solution for REBNY-member brokers or consumers. REBNY's intent to monopolize the Listing Service market and its constituent sub-markets was made patently evident in June 2004, when REBNY (a) announced that it intended to purchase from Defendant BHS its ROLEX system and presumably some form of its underlying RealPlus Real Estate Database and (b) began to require all REBNY members use ROLEX as their sole method of transmitting and receiving REBNY-member Exclusives. As ROLEX/RealPlus is also sold to other non-REBNY brokers, REBNY's action not only served in one fell swoop to destroy competition *vis a vis* REBNY-members in the sub-markets for Real Estate Databases and Data Transmission Services, but, indeed has put REBNY in the position of being able to influence the choices of services and products even available to non-REBNY members who may have relied on Listing Services like those provided by BrokersNYC.

103. Plaintiff submits that REBNY's actions not only have been directed to taking over the Listings Services field, but to coerce non-member brokers working for REBNY firms to

join REBNY, and to induce non-REBNY firms to join Trade Association services by enticing them with the efficient exchange of Exclusive Listings. Indeed, upon information and belief, even among REBNY member brokerage houses, relatively few of their agents obtained REBNY membership although REBNY's bylaws have insisted that member firms assure that their brokers are also REBNY members.

104. Upon information and belief, through the present day, less than 5% of REBNY-member brokers have full compliance with the 100% membership rule. The advent of the 72 Hour Rule, mandating Exclusive Agents to initiate an offer of co-broke within 72 hours gave REBNY leverage to (a) attract new REBNY members and to (b) move forward with a plan to enforce the 100% membership rule.
105. In June 2004, REBNY upped the ante by tying access to the REBNY Listing Service to REBNY trade association membership. The "Addendum to the Universal Co-Brokerage Agreement of Exclusive Sales and Rental Listings" sets forth as pertinent :
1. A 72-hour participating firm must maintain Real Estate Board of New York (REBNY) membership.
 2. A 72-hour participating firm and its associates must maintain 100% membership in REBNY and must adhere to the REBNY Code of Ethics and the Residential Division's Resolutions. Each firm will be notified by February 1st of any delinquent membership payment(s). Each firm must rectify delinquent payment(s) by March 1st. Failure to do so will be deemed an immediate violation of the REBNY Listing Service Agreement and shall terminate such firm's participation in the REBNY Listing Service."
106. Upon information and belief, the 72 Hour Rule, which spawned the now so-called

“REBNY Listing Service,” is a blatant attempt by defendants to force real estate brokers and other entities, who require access to REBNY member Exclusive Listings for their livelihood, to purchase Trade Association services and the BHS’s “seamless transmission” service, ROLEX/RealPlus.

INTERSTATE COMMERCE

107. Upon information and belief during 2003, alone, there were over \$1 billion residential properties for sale through Manhattan real estate brokers. In the four-year period, 2000-2003, upon information and belief, \$2 to \$4 billion of residential real estate was sold.
108. In the period 2000-2003, the volume of long-term mortgage loans for sales of existing residential sales was also in excess of several billion dollars of which not an insubstantial amount was provided by institutional lenders outside of New York. Upon information and belief, in the period 2000-2003, several billions of dollars of mortgage loans on property listed by Manhattan sales brokers were sold in the interstate mortgage market.
109. Upon information and belief, in the period 2000-2003, the volume of title insurance on sales of existing residences was in excess of many millions of dollars. Upon information and belief, not an insubstantial amount of the title insurance was provided by insurance institutions located outside of New York and employing the channels of interstate commerce to effect insurance agreements.
110. Upon information and belief, a material percentage of the loans cited above were also guaranteed by institutions such as the United States Veterans Administration and Department of Housing and Urban Development, also located outside of New York and

employing the channels of interstate commerce to effect insurance/financing agreements.

FIRST CLAIM FOR RELIEF

(Section 1 of the Sherman Act: Illegal Tying of Access to Exclusive Listings Information to the Use of REBNY's ROLEX/RealPlus Data Transmission and Real Estate Database Services)

Two Separate Services or Products

111. Plaintiff repeats and re-alleges the allegations of paragraphs 1 through 110 above as though the same were set forth in full herein.
- a. As previously alleged, the market for Listing Services is comprised of three sub-markets: (a) the market for Exclusive listings themselves (for Exclusive Listings content) (b) the market for Real Estate Databases; and c) the market for Data Transmission Services. As previously stated, the geographic market for said Listing Services is the Borough of Manhattan, New York.
 - b. The product market for real estate professional trade association services (Trade Association Membership Services) includes the following bundle of services: real estate education courses, real estate related certifications, referral programs, professional recognition, conventions, publications on real estate topics, lobbying activities to advance the real estate-themed purposes of the trade association, and local chapters offering local benefits, including social activities. Upon information and belief, the geographic market for REBNY's Trade Association Membership Services is the

Borough of Manhattan, where it operates as the predominate real estate trade association.

- c. REBNY sells and bills for trade association membership to individual brokerage agents. Upon information and belief, until at least June 2004, REBNY did not own or operate a Listing Service, had no hardware, software or personnel dedicated to operating a Listing Service.
- d. Upon information and belief, distinct from Trade Association Membership Services are the services provided by REBNY in connection with mandating the use of the joint ROLEX (Data-Feed Transport Services) and its underlying RealPlus (Real Estate Database) systems. Upon information and belief, both of these services/products are owned and operated by BHS or its affiliates. Upon information and belief REBNY members utilizing these services must pay a user fee to BHS or one of its affiliated companies.
- e. BrokersNYC is a competitor of BHS in the market for Listing Services, which includes the sub-markets for Exclusive Listings, Real Estate Databases and Data Transmission services.

Market Linkage

112. As the prominent trade association for Manhattan's real estate brokers, REBNY and the Broker Defendants enacted bylaws in October 2002, including the 72 Hour Rule which mandated that REBNY-members must (a) transmit their Exclusive Listings to other

⁴ Temporarily, REBNY permitted members to exchange Exclusive Listings by fax or email or via certain approved integrators including Homeseekers, OLR, etc.

REBNY-members and (b) utilize only the ROLEX/RealPlus platform⁴ to transmit and receive REBNY member Exclusive Listings.

113. REBNY's 72 Hour Rule has effectively tied access to REBNY- member Exclusive Listings to the use of the ROLEX/RealPlus system owned and/or controlled by defendant BHS or a related entity. Plaintiff submits that tying access to REBNY member Exclusives listings to the use of ROLEX/RealPlus serves no pro-competitive purpose and, indeed, is blatantly anticompetitive. Upon information and belief, to the extent quality control concerns present themselves as a justification for the tying arrangement described above, such concerns could have readily been addressed by establishing a set of standards for data (Exclusive Listings) exchange and usage amongst REBNY-member brokers and/or their respective Listing Services such as Plaintiff.

114. In addition to tying access to REBNY member Exclusive Listings to the use of ROLEX and, therefore, RealPlus, defendants have also tied access to such listings to REBNY Trade Association Membership—a circumstance, which has been found to be in violation of the antitrust laws in a number of other jurisdictions where Multiple Listing Services have existed for some time.

115. The transmittal or receipt of data or Exclusive Listings necessarily requires a receptacle for information – a database or Real Estate Database, and a transportation vehicle—a Data Transmission Service, so that the content of the database can be transmitted to and received by users of their own databases. By mandating ROLEX as the only approved transmission system, REBNY, in effect, has tied the purchase of the RealPlus Real Estate Database receptacle to the exchange of Exclusive Listings.

Market Power

116. The vast majority of residential real estate sold or rented from Exclusive Listings is and has been transacted by REBNY- member firms. Since REBNY member firms generate, upon information and belief, upwards of 80% of the Exclusive Listings available in the Manhattan market, the REBNY Listing Service has come to dominate the market for the Exclusive Listings relevant to Manhattan.
117. Upon information and belief, many BrokersNYC broker clients are REBNY members who want to transmit their Exclusive Listings to REBNY member brokers and receive Exclusives Listings from REBNY member brokers *via* BrokersNYC own facilities and not have to switch to or purchase and use the ROLEX/RealPlus system, now mandated by REBNY.
118. Additionally, by preventing BrokersNYC from transmitting and receiving Exclusive Listing information to and from its own REBNY clients, it has in effect, also excluded REBNY-member clients of BrokersNYC who are entitled to such Exclusive listings - without which the latter cannot effectively compete with other REBNY members who have access to the REBNY Listing Service simply because they utilize the RealPlus/ROLEX platforms.
119. Defendant Brown Harris Stevens and the other Broker Defendants, who, upon information and belief, generate a large portion of the Exclusive Listings generated by REBNY members have been able to parley this dominance into control over the policies and procedures employed by REBNY to regulate the holding and transmittal of REBNY member Exclusive Listings.
120. Through their collective domination and control of REBNY, Defendants have

conspired with one another to have REBNY issue regulations and rules intent upon destroying competition to the benefit of the likes of BHS and other Broker Defendants who, upon information and belief, have perceived BrokersNYC and other such Listing Services as a direct threat to their control over the Manhattan real estate market.

121. The scenario as described herein threatens to destroy competition in the relevant market for Listing Services by threatening to make REBNY, if not the only source of Exclusive Listing information to brokers and hence consumers, at minimum the most predominate source of such critical listing information. As previously described, without the approval to transmit and receive Exclusive Listings on behalf of their REBNY-member clients, Listing Service providers like plaintiffs and their REBNY-member clients, independent brokerage firms, cannot possibly be expected to compete.

122. Upon information and belief, nearly 100% of Manhattan agents need access to substantially all Exclusive Listings. Although there are other information sources in the Borough of Manhattan containing real estate information, such as newspapers, free real estate magazines found at supermarkets, sidewalk boxes and proprietary websites of real estate brokerage firms, none offer the functionality of Listing Services. Upon information and belief, there is probably not a single real estate agent active in residential brokerage activity in Manhattan who considers such newspapers, fliers and websites to be a reasonable substitute for the kind of comprehensive Exclusive Listings available through REBNY members.

123. Currently, all REBNY-member firm agents have access to REBNY-member Exclusive Listings whether or not they, themselves are dues paying members of REBNY. Thus, non-REBNY company agents are at a competitive disadvantage to non-REBNY members

agents whose firms are REBNY members.

124. As a result of defendants' actions, as detailed above, brokers who desire to use alternative database and transmission /datafeed systems to those mandated by REBNY, will be deprived of that choice, have to pay exorbitant costs relating to set up fees, monthly subscription fees and technical support services connected with the ROLEX/RealPlus systems and have to join REBNY, entailing the payment of Trade Association membership fees in order to access critical Exclusive Listings information. Finally, in the case of BrokersNYC's REBNY-member clients, they will be confronted with the Hobson's choice of either having to purchase ROLEX and terminate BrokersNYC in order to gain access to Exclusive Member Listings and thereby have to incur more expense and lose functionality such as advertising and web hosting services, or purchase ROLEX in addition to Brokers NYC, and thereby incur redundant systems and costs and hazard inefficiencies stemming from the use of two systems – whilst the large brokers have the convenience and efficiency of using one single system-integrated Exclusive Listings and other services.

125. In addition to the higher costs and diminishment of choices confronting REBNY members as a result of REBNY's policies, brokers who have chosen not to be REBNY members will confront a situation where membership in REBNY becomes necessary for their own survival. Such forced membership will, of course, entail costs and commitments, which these brokers have resisted. Indeed, for the brokers who have used BrokersNYC's services because of their superior functionality and because of the company's reputation since 1996 as a pioneer in the relevant market they will be required to forego such services in favor of REBNY's ROLEX system not because of the latter system's superior qualities

but because it is the vehicle for accessing Exclusive Listings that are critical to brokers for them to be able to compete.

126. As described above, defendants have sought to use their formidable power as the predominate real estate Trade Association in Manhattan to tie access to REBNY's Exclusive Listings (the tying product) to the mandated use of the ROLEX/ RealPlus software platform (the tied product) now mandated for use by REBNY and in which, upon information and belief, REBNY may have a financial interest.
127. As described above, defendants have also used their formidable power as the main real estate Trade Association in Manhattan to tie access to REBNY's Exclusive Listings (the tying product) to REBNY trade association membership (the tied product) which is a reservoir of information to which REBNY has appointed itself the sole gatekeeper.
128. As a consequence of these tying arrangements, purveyors of established software platforms in the market for Listings Services, like plaintiff, have been effectively excluded from being able reasonably to access and exchange or integrate Exclusive Listings information on behalf of their REBNY-member clients, which would make established Listings Services and their REBNY-member broker clients viable and competitive.
129. Decisional law from other jurisdictions indicates that analogous tying arrangements have been found to be anticompetitive in violation of the antitrust laws. See *Marin County Board of Realtors v. Palsson*, 16 Cal.3d 920, 549 P.2d 833 (1976); *Grillo v. Board of Realtors of the Plainfield Area* 91 N.J. Super. 202 (1966); *Oates v. Eastern Bergen County Multiple Listing Service, Inc.*, 113 N.J. Super. 371 (1971); and *Pomanowski v. Monmouth County Board of Realtors*, 166 N.J. Super. 269 (1979).

Not Insubstantial Effect on Interstate Commerce

130. Upon information and belief, in the four years preceding this suit, the tied products Real Estate Databases and Data Transmissions Services, have made possible billions of dollars of real estate transactions involving interstate parties, the effectuation of interstate loans, and insurance policies involving commitments made by interstate actors. Upon information and belief, apart from the significant impact such services have in terms of facilitating real estate transactions, upon information and belief, such services are also used by interstate actors who are interested in buying and selling real estate in the international real estate market of Manhattan.

REBNY has an Economic Interest in the Tied Product

131. Upon information and belief, in the two years prior to the filing of this suit, REBNY has increased its membership in part because it has coerced brokers who otherwise might not have been interested in REBNY membership into being REBNY members so that they can obtain access to critical Exclusive Listings information that REBNY has come to regulate. Such coerced membership has afforded REBNY an increase of the total amount of dues paying members, which has redounded to its benefit and to the detriment to potential clients of BrokersNYC. Additionally, upon information and belief, insofar as the ROLEX/RealPlus software platform has been sold to REBNY, the latter has been able to garner, in addition to membership fees, administrative fees directly related to the providing and servicing of the RealPlus/ROLEX systems.

132. As a result of the foregoing, plaintiff, *inter alia*, has been severely damaged in terms of lost customers, increased expenses and lost profits in an amount to be determined

at trial not less than \$2 million.

SECOND CLAIM FOR RELIEF

(Section 1 of the Sherman Act: Group Boycott Directed at BrokersNYC and other Listings Services)

133. Plaintiff repeats and re-alleges the allegations of paragraphs 1 through 132 above as though the same were set forth in full herein.
134. REBNY and Broker Defendants control access to a vast number of Exclusive Listings without which Listing Services, like plaintiff, whose clients have expectations of integration, will be deprived of the opportunity to compete effectively on equal terms with REBNY and/or its approved integrators. By dint of their relationship, REBNY and Broker Defendants have been able conspire with one another to set up rules and regulations purporting to govern the vast REBNY membership which, in effect, serve to exclude from access to critical listings, Listing Services such as Plaintiff which serve REBNY-members who reasonably expect to be able to access such Exclusive Listings.
135. Upon information and belief, the so-called integrators (designated Listing Service providers who have been given access to REBNY-member Exclusive Listings) are controlled by or have a relationship with one or more of the defendants.
136. Virtually all the brokers in the relevant geographic market are dependent on REBNY member listings, which collectively amount to billions of dollars in sales annually.
137. It is critical to the economic survival of brokers to have efficient and/or comparable access to such listings.
138. The rules promulgated by REBNY, which require an entity to obtain REBNY membership as a condition to gaining access to REBNY-member Exclusive Listings has

no legitimate business purpose, where the party receiving the Listing information in question is not receiving it for use in brokerage but in its capacity as a conduit to REBNY members who are entitled to receive such information and choose to employ BrokersNYC's services to obtain it.

139. First, there is no reason to make REBNY membership a requirement for listing access as opposed to simply establishing a datafeed exchange and imposing quality control guidelines on the use of such listings whether the receiver of such information is a licensed broker or a Listing Service mandated to pass on such information to qualified REBNY members.
140. Second, upon information and belief, not only is the membership requirement unnecessary for quality control purposes, but, as it turns out, REBNY's membership requirement is selectively enforced at best. An estimated 95% of REBNY member firms do not maintain 100% agent-membership in REBNY and are not dues paying members of REBNY, although, upon information and belief, they are accorded access to all REBNY-member Exclusive Listings as if they were members in their own right.
141. On this basis the withholding of REBNY Listings from BrokersNYC's non-REBNY members is artificial and not in the least intended to improve the quality of brokerage services. To the contrary, upon information and belief, the 100% requirement rule has been used as a mere pretext for engaging in anticompetitive conduct.
142. As the result of the conduct alleged above, which involves excluding BrokersNYC and its REBNY-member clients from accessing REBNY-member Exclusives, BrokersNYC, *inter alia*, has perforce been losing customers and has incurred higher information expenses, all of which has caused it to incur lost profits in an amount to be determined at

trial not less than \$2 million.

THIRD CLAIM FOR RELIEF

(Defendants Have Attained by Leveraging REBNY's De-Facto Monopoly Power in the Market for Trade Association Membership Services Illegal Domination and Control Over Access to Exclusive Listings, which is an Essential Facility to Purveyors of Services in the Sub-markets for Related Real Estate Database and Data Transmission Services)

143. Plaintiff repeats and re-alleges the allegations of paragraphs 1-142 above as though the same were set forth in full herein.

144. As alleged above, REBNY is the single most dominant Trade Association for participants in the Manhattan real estate market.

145. Upon information and belief, REBNY members generate upwards of 80% of all Exclusives relevant to the geographic market

146. Defendants have employed their dominating power to regulate the generation and communication of Exclusive Listings between and among REBNY members. This conduct has afforded REBNY predominating power over access to these listings without which brokers cannot hope to effectively compete in the Manhattan Cooperative/Condominium resale and rental markets.

147. By virtue of its actions, which have been engineered by working through REBNY, REBNY has promulgated rules intended to exclude from access to critical exclusive listings, REBNY-members who employ BrokersNYC to receive and transmit exclusive listings information and organize such listings in a database accessible to REBNY members. As a result of REBNY's actions in this regard, BrokersNYC and other private Listing Services have, in effect, been deprived of an essential facility (Exclusive Listings)

without which they cannot serve the needs of their REBNY clients and thereby be able to compete in the market for Listing Services.

148. Plaintiff submits that, additionally, REBNY's power to control and regulate information on REBNY-member Exclusive listings has evolved into a natural monopoly in the market for Exclusive Listings information for the Borough of Manhattan and that as a result of its power in this market has been able to coerce BrokersNYC members into adopting database goods and services that directly compete with those goods and services provided by BrokersNYC in the sub-markets for Database and Data Transmission Services. Plaintiff submits that, accordingly, REBNY has placed itself in the position of being able to charge monopoly pricing for information services.

149. As a result of the defendants' conduct in this regard, plaintiff, *inter alia*, has been damaged in an amount to be determined at trial not less than \$2 million.

FOURTH CLAIM FOR RELIEF
(Section 2 of the Sherman Act: Attempted Monopolization in the Relevant Market)

150. Plaintiff repeats and realleges the allegations of paragraphs 1-149 above as though the same were set forth in full herein.

151. As a result of REBNY's dominating control over access to critical REBNY member Exclusive Listings, REBNY is poised to coerce brokers heretofore using the services of other listing Services into using the RealPlus/ROLEX systems.

152. As a consequence of this anticompetitive conduct, there is a dangerous probability that defendants will be able to assume a monopoly position in the Listing Service market through its domination and control over the sub-market for Exclusive Listing information.

153. Upon information and belief, one can reasonably infer from the anticompetitive rules and regulations promulgated by REBNY since 2002 rules, that REBNY and defendants have colluded to monopolize the relevant sub-markets described herein with the specific intent to destroy BrokersNYC and other similar purveyors of Listing Services whose own products actually and potentially compete with REBNY's mandated RealPlus/ROLEX systems and which are, themselves, dependant on being able to transmit and receive Exclusive Listing information on behalf of their REBNY members clients.
154. Upon information and belief, the rules and regulations promulgated by defendants are specifically and exclusively designed to allow defendants to parley their control over listings into a monopoly in the relevant sub-markets for Listing Services.
155. Should defendants succeed in establishing such monopoly control, defendants will be poised not only to raise information costs, but to utilize their power in the relevant market to block new potential entrants as well as to destroy current competitors. In the long run, such control will threaten the much larger market for discount broker services, whose participants are, themselves, dependant on keeping information costs down.
156. Concentrating such power in the hands of defendants will also create an environment susceptible to corruption and abuse as defendants will be in the position of bringing added pressure on members who might oppose REBNY's policies by way of threatening the former with rescinding or withdrawing membership privileges, which would, in effect, bar them from access to REBNY's Exclusive listings.
157. As a result of the efforts by defendant to monopolize the relevant sub-markets that comprise Listing Services, plaintiff, *inter alia*, has lost customers, incurred higher costs, and lost profits in an amount to be determined at trial not less than \$2 million.

FIFTH CLAIM FOR RELIEF

(Injunctive Relief Under 15 U.S.C. Section 26: Rolex Platform Restriction)

158. Plaintiff Brokers NYC repeats and re-alleges the allegations of paragraphs 1-157 above as though the same were set forth in full herein.

159. If defendants are allowed to tie access to REBNY Exclusive Listings to the mandated use of the RealPlus/ROLEX platform, it will precipitate a substantial loss of BrokerNYC's client base and destroy its business. Plaintiff submits that if an injunction is not in place to avert this situation that the harm to Brokers NYC's good will shall be irreparable and immediate and endanger the company's ability to survive.

160. As previously alleged, defendants' attempt to force REBNY brokers to use BHS's system to the exclusion of existing alternate systems advanced by BrokersNYC is as anti-competitive as it is unnecessary.

161. At the same time, the issuance of injunctive relief would not harm defendants aside from inhibiting their anti-competitive conduct, i.e. foisting upon all REBNY members (and current customers of BrokersNYC) the ROLEX/RealPlus software platform.

162. As a result of the foregoing, this Court should issue a temporary restraining order, and issue orders of preliminary and permanent injunctive relief to avert the threatened loss and damage arising from defendants' illegal conduct.

SIXTH CLAIM FOR RELIEF

(Injunctive Relief Under 15 U.S.C. Section 26: Exclusion from Access to REBNY Member Exclusive Listings)

163. Plaintiff Brokers NYC repeats and re-alleges the allegations of paragraphs 1-162 above as though the same were set forth in full herein.

164. If defendants are allowed to prevent Listing Service providers like BrokersNYC from being able to receive and transmit REBNY member Exclusive Listings between and

among REBNY members and REBNY clients of BrokersNYC, it will precipitate a substantial loss of BrokersNYC's client base and destroy its business and goodwill. Plaintiff submits that if preliminary injunctive relief is not in place to avert this situation that the harm to BrokersNYC and potentially to that of its REBNY-member clients will be irreparable and endanger the company's ability to survive.

165. As previously alleged, defendants' attempt to exclude BrokersNYC and its REBNY clients from accessing critical Exclusive Listing information is patently anti-competitive and is unnecessary as a pro-competitive measure.

166. At the same time, the issuance of injunctive relief would not harm defendants aside from inhibiting their anti-competitive conduct, i.e. which, in effect, is coercing REBNY clients of BrokersNYC into abandoning their relationships with BrokersNYC to the catastrophic detriment of the latter.

167. As a result of the foregoing, the Court should issue preliminary and permanent injunctive relief compelling REBNY into affording REBNY-members clients of BrokersNYC equal access to Exclusive Listing information as REBNY members who do not use the services of BrokersNYC and concomitantly allow BrokersNYC to integrate with the REBNY's ROLEX and RealPlus systems so that qualified BrokersNYC clients still have the viable option of using the latter's Listing Services.

SEVENTH CLAIM FOR RELIEF
(GBL Section 340: Defendant is in Violation of the
Donnelly Act of New York State for Illegal Tying)

168. Plaintiff repeats and re-alleges the allegations of paragraphs 1 through 167 above as though the same were set forth in full herein.

169. On the basis of the allegations set forth above, defendants are liable under the

Donnelly Act for illegally tying access to REBNY member Exclusive Listing information to mandatory use of REBNY's RealPlus/ROLEX database platforms.

170. Defendants are also liable for illegally tying access to Exclusive Listings information to REBNY membership.

171. As a result of the foregoing, the plaintiff, *inter alia*, has lost customers, has been forced to incur greater expenses and has incurred lost profits in an amount to be determined at trial not less than \$2 million.

EIGHTH CLAIM FOR RELIEF

(GBL Section 340: Defendant is in Violation of the Donnelly Act by Engaging in a Group Boycott)

172. Plaintiff repeats and re-alleges the allegations of paragraphs 1-171 above as though the same were set forth in full herein.

173. As previously stated, defendants have engaged in a group boycott of plaintiff and others by depriving them of access to critical Exclusive Listings, without which their clients cannot compete in the Manhattan real estate market.

174. There is no pro-competitive justification to withholding access to this information from REBNY members entitled to it because they choose to use plaintiff's various services instead of ROLEX RealPlus.

175. On the basis of the foregoing, plaintiff has been damaged in terms of, *inter alia*, incurring lost customers, increased expenses and lost profits in an amount to be determined at trial not less than \$2 million.

NINTH CLAIM FOR RELIEF

(GBL Section 340: Defendant is in Violation of the Donnelly Act by Monopolizing an "Essential Facility")

176. Plaintiff repeats and re-alleges the allegations of paragraphs 1-175 above as though the same were set forth in full herein.

177. As previously alleged, REBNY and Broker Defendants working through REBNY have amassed control over access to critical Exclusive Listings supplied by REBNY members. These listings account for upwards of 80% of the listings available in the relevant Manhattan real estate market.

178. As a result, defendants have come to control an essential information facility without which competitors in the Listing Service market cannot serve their REBNY broker clients.

179. REBNY's natural monopoly in the market for Exclusive listings information acquired as a function of its status as the predominant Real Estate Trade Association in Manhattan, has afforded defendants unrestricted power to develop arbitrarily restrictive rules calculated to deprive BrokersNYC, and other such service providers, of the ability to provide critical listings information to their own REBNY clients.

180. Such efforts on defendants' part are patently anticompetitive and intended to destroy competition in the relevant market and its sub-markets.

181. As a result of the foregoing plaintiff has been damaged, *inter alia*, in terms of lost customers, higher information costs and lost profits in an amount to be determined at trial not less than \$2 million.

TENTH CLAIM FOR RELIEF
**(GBL Section 340: Defendant is in Violation of the Donnelly Act of New York State
for Attempting to Monopolize the Relevant Market)**

182. Plaintiff repeats and re-alleges the allegations of paragraphs 1 through 181 above as though the same were set forth in full herein.

183. On the basis of the allegations set forth above, defendants are also liable under the Donnelly Act for illegally attempting to achieve monopoly power in the relevant sub-markets for Database and Data Transmission Services by raising substantial barriers to entry to competition.
184. As previously alleged, defendants are dangerously poised to stake out a monopoly position in the relevant sub-markets as a function of its control and domination of both access to REBNY member Exclusive Listings and the means by which such listing are to be transmitted and received by REBNY members.
185. Should defendants be successful in monopolizing the relevant sub-markets, they will be in the position to raise information costs and barriers to entry, and reduce the scope and variety of Listing Services available.
186. As a result of the foregoing conduct, the plaintiff BrokersNYC, *inter alia*, has lost customers, has incurred unnecessary expenses and has incurred lost profits in an amount to be determined at trial not less than \$2 million.

WHEREFORE, Plaintiffs demand judgment as follows:

- A. On the First Claim for Relief on the basis of illegal tying, a judgment in the amount of not less than \$2 million;
- B. On the Second Claim for Relief on the basis of Group Boycott directed against Brokers NYC, a judgment in the amount of not less than \$2 million;
- C. On the Third Claim For Relief on the basis of Exercising Monopoly Power so as to illegally preclude plaintiff access to an essential facility, a

judgment in an amount to be determined at trial not less than \$2 million;

D. On the Fourth Claim for Relief on the basis of attempted monopolization, a judgment in the amount of not less than \$2 million;

E. On the Fifth Claim for Relief, a judgment in the form of an injunction, enjoining the requirement that REBNY member Exclusive listings be transmitted only by way of Brown Harris Stevens RealPlus/ROLEX software platform.

F. On the Sixth claim for Relief, a judgment in the form of a mandatory injunction requiring REBNY to integrate with Listing Service Providers who are operating on behalf of REBNY members who qualify to receive such listings.

G. On the Seventh Claim for Relief, on the basis of illegal tying of products under State law a judgment in an amount not less than \$2 million;

H. On the Eighth Claim for Relief on the basis of illegal boycott under State Law an amount to be determined at trial not less than \$2 million;

I. On the Ninth Claim for Relief on the basis of defendants' illegally withholding an essential facility, a judgment in an amount not less than \$2 million;

J. On the Tenth claim for Relief on the basis of attempted monopolization, a judgment in an amount to be determined at trial not less than \$2 million;

K. Awarding Plaintiff reasonable attorneys' fees, costs and disbursements as provided under Federal and State Laws;

L. Awarding plaintiffs treble damages as provided under Federal Laws;

M. Awarding punitive damages in an amount to be determined by the trier of fact not less than \$18 million for willfully and knowingly violating the antitrust laws;

N. Awarding such other and further relief as may be just and proper.

Dated: New York, New York
October ____, 2004

McCALLION & ASSOCIATES LLP

By: _____
ROBERT IAN GOODMAN (RIG-6697)
24 West 40th Street, 17th Floor
New York, New York 10018
Tel: (646) 366-0884

Attorneys for Plaintiff